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THE LAW-CODE OF KING ALFRED THE GREAT

VOLUME ONE



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THE LAW-CODE OF KING ALFRED THE GREAT

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The law-code of King Alfred the Great (871-99) is one of the largest and most ambitious legislative enactments to survive from Anglo-Saxon England. It came to be known as *seo domboc* (the law or judgement book), and was cited using that appellation in the law-codes of Alfred's tenth-century successors. This dissertation consists of a study (volume one), together with an edition and critical apparatus (volume two). Matters pertaining to the substantive law are reserved as the subject of on-going research.

In volume one, the textual history of the law-code is examined. First, each of the extant manuscripts is described in detail, including three transcripts of varying importance made by the sixteenth-century antiquary Laurence Nowell. These transcripts, two of which are discussed for the first time in this dissertation, appear to have been known to, and used by, William Lambarde, who prepared the *editio princeps* of the Anglo-Saxon laws. Having assessed the physical evidence of the manuscripts, the textual transmission is reconsidered, and a new stemma is provided. Finally, the law-code is divided into its four component parts (a table of rubrics, biblical introduction, Alfred's law-code, and Ine's law-code), and each is examined separately. Although this division is suggested by the code itself, close analysis reveals that these four parts do not form a particularly coherent whole. The rubrics, which give the composite code (*Alfred-Ine*) its artificial sense of unity, frequently ignore important provisions or miss the central point of a law entirely; and the 'appendix', which purports to have been issued two centuries before Alfred's code by King Ine of Wessex (688-726), contradicts Alfred's own law on several occasions. As a necessary preliminary to any analysis of the substantive law, the status of this appendix is examined, for one must decide whether it may be used as good evidence of seventh-century law, or whether there are signs of Alfredian alteration. Furthermore, given the existence of these contradictions, one must question whether Alfred ever intended Ine's code to be read as an integral part of his own law-book.

Volume two, which forms an appendix to this dissertation, is the first English edition of the law-code in its entirety since 1893.

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PREFACE

The law-code of King Alfred the Great (871-99) is one of the largest and most ambitious legislative enactments to survive from Anglo-Saxon England. Although it is not comparable with the statutes of a developed legal system, its influence extended past the Norman Conquest, into the twelfth century, and beyond. It was composed in the vernacular, probably during the late 880s or 890s, a period characterized in England by the revival of learning following an attempted Viking conquest. The seeds of political unification, which germinated in the tenth century, were sown in ninth-century Wessex; and Alfred's own aspirations to a wider dominion could be implied by the acknowledged use of Kentish and Mercian sources in his law-code. Yet, in contrast to the royal styles adopted in some of his later diplomas, it was as 'king of the West Saxons' (*Westseaxna cyning*) that Alfred promulgated this law.

This dissertation consists of a detailed textual study of King Alfred's law-code (volume one), together with an appendix containing a new edition and full critical apparatus of variant readings (volume two). The substantive legal contents of *Alfred-Ine* have not been examined at length in this dissertation. Having acknowledged this omission, one must also recognize that the scope of this work is limited, and it is impossible to address (let alone answer) every interesting question

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raised by the law-code. This dissertation is intended as the first fruit of on-going research, and before publication can be contemplated, a full clause by clause commentary will need to be prepared. This should allow the explication of legal minutiae, and will encompass matters of interest which perforce cannot be raised in the present context (such as the relationship of *Quadripartitus* to the surviving vernacular manuscripts). The language of the law-code, and attempts to discern signs of Alfred's personal involvement in its composition, also lie beyond the scope of this dissertation. Such matters demand detailed comparative analysis, and are best reserved as the subject of separate inquiry.¹

This dissertation is entirely the work of the named author, and has not been submitted previously for any degree, diploma or other qualification. It includes nothing which is the outcome of research done in collaboration. All quotations and references are acknowledged in the text; full details of all works consulted are given in the bibliography.

¹ A doctoral dissertation, entitled *Old English Legal Vocabulary*, is currently being prepared in this University by Mr Jürg Schwyter of Emmanuel College.

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It is a great challenge, and a tremendous opportunity, to leave one's homeland and travel half way across the world in the pursuit of knowledge. In doing so, I have encountered many people who have helped and supported me, and have made many friends. Although impossible to thank them all individually, I should like here to record my debt of gratitude to them. It would, however, be remiss of me not to express my particular thanks to certain institutions and individuals who have been instrumental in the completion of this work.

Firstly, my thanks go to Trinity College, which not only awarded me the External Research Studentship thereby making this work possible, but whose members, both individual and collective, ensure that my time in Cambridge continues to exceed all expectations. I must also acknowledge assistance from several other sources: the Overseas Research Students Award scheme; the Cambridge Commonwealth Trust; the H.M. Chadwick fund; the Kathleen Hughes Memorial fund; the Scandinavian Studies fund; the Eddington fund; the F.W. Maitland Memorial fund; and the Gaillard T. Lapsley fund.

I am indebted to the staff of many libraries in this country for allowing me to use their collections: to the Wren Library of Trinity College; the Parker Library, Corpus Christi College Cambridge (and especially the librarian Professor R.I. Page); the British Library (and

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especially Mrs Michelle Brown of the Department of Western Manuscripts); the Dean and Chapter of Rochester Cathedral for allowing me to use the *Textus Roffensis*; the Kent Archives Office; the Canterbury Cathedral Library; the Master and Wardens of the Drapers' Company; the Bodleian Library, Oxford; and the University Library, Cambridge.

Most of all, my thanks belong to those scholars who have given of their time so generously to discuss my research: Dr David Dumville, Dr Michael Lapidge, Mr Paul Bibire, and Mr Jürg Schwyter of the Department of Anglo-Saxon, Norse and Celtic; Dr John Dawson of the University's Literary and Linguistic Computing Service; Professor Carl Berkhout of the University of Arizona; and Mr Patrick Wormald of Christ Church, Oxford. The handsome Anglo-Saxon characters which appear in this dissertation were designed by Dr John Hinch of Trinity College. My especial thanks go to Dr Simon Keynes, who supervised the preparation of this work, and guided my thoughts and studies even before I arrived in Cambridge. He has been a patient, friendly and competent teacher, and I have benefitted continuously from his deep knowledge of all things Anglo-Saxon.

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Finally I must thank my family, who for the past three years have aided and supported me through every stage of the preparation of this dissertation. It is to them, but especially to my wife Anita, that I dedicate this work.

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NOTE ON THE SYSTEM OF REFERENCE

The best complete edition of the Anglo-Saxon laws is Felix Liebermann's, *Die Gesetze der Angelsachsen* (Halle, 1898-1916). All quotations from the law-codes are taken from this edition, with the exception of those from *Alfred-Ine* which are cited from my own edition of the code (volume two of this dissertation). Translations are given where it has seemed helpful to do so. The clause numeration of the law-codes, which is employed throughout this dissertation, was established by Reinhold Schmid in his second edition, and was adopted by Felix Liebermann.¹ It has been used in all editions and secondary literature published since 1858, despite the fact that it is frequently misleading.² In my edition I have given a proposed re-numeration within angled brackets, but in order to be consistent with established practice, and to allow easy cross-referencing against earlier works, I have used the conventional numeration throughout this volume.

¹ Reinhold Schmid, ed., *Die Gesetze der Angelsachsen*, second edition (Leipzig, 1858).

² For details, see the appendix to this volume, pp. 339-42.

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In the citation of law-codes, I use the following sigla to abbreviate the names of those Anglo-Saxon kings who issued legislation. They are based on the sigla instituted by Felix Liebermann (see Liebermann, ed., *Gesetze*, I, p. ix).

TABLE 1 KING RESPONSIBLE FOR LAW-CODE	SIGLA
Æthelberht Alfred Alfred-Guthrum Æthelred the Unready Æthelstan Canute Edgar Edmund Edward the Elder Hlothhere & Eadric Wihtred	Abt. Alf. AGu. Atr. As. Cnut Edg. Edm. Edw. Hl. Wi.

Charters are cited (where appropriate) by their number in P.H. Sawyer's *Anglo-Saxon Charters. An Annotated List and Bibliography* (London, 1968), hereafter abbreviated as 'S'. References to the Anglo-Saxon Chronicle are cited in the following form: ASC (A) s.a. (=sub anno) 871. Dorothy Whitelock's indispensable reference work, *English Historical Documents c. 500-1042*, I, second edition (London, 1979) is cited throughout as *EHD*.

All quotations from the Latin Bible (unless otherwise specified) are taken from the Vulgate.

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I have used the edition of the Vulgate Bible with variant readings commissioned by Pope Pius X in 1904: *Biblia Sacra iuxta latinam Vulgatam versionem ad Codicum fidem...cura et studio Monachorum Sancti Benedicti Commissionis Pontificiae a Pio PP. X institutae sodalium...Libros Exodi et Levitici ex interpretatione Sancti Hieronymi cum prologis variisque capitulorum seriebus adiectis prolegomenis recensuit D. Henricus Quentin* (Rome, 1929).

When I refer to manuscripts, *BL* = British Library and *CCCC* = Corpus Christi College, Cambridge. Manuscripts of the law-codes are cited using Liebermann's sigla (all manuscripts of *Alfred-Ine* are listed, with their sigla, in the bibliography). It should be noted that throughout this dissertation 'Q' is used to designate the twelfth-century Latin translation of the laws, *Quadripartitus*.

Books and articles are cited in footnotes using an abbreviated title. The following abbreviations have been adopted for the titles of series and periodicals.

<u>Archiv</u>	<i>Archiv für das Studium der neueren Sprachen und Literaturen</i>
<u>ASE</u>	<i>Anglo-Saxon England</i>
<u>BAR</u>	<i>British Archaeological Reports</i>
<u>BMQ</u>	<i>British Museum Quarterly</i>
<u>EEMF</u>	<i>Early English Manuscripts in Facsimile</i>

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<u>EETS</u>	<i>Early English Text Society</i>
<u>EHR</u>	<i>English Historical Review</i>
<u>ELN</u>	<i>English Language Notes</i>
<u>JLH</u>	<i>Journal of Legal History</i>
<u>JTS</u>	<i>Journal of Theological Studies</i>
<u>LQR</u>	<i>Law Quarterly Review</i>
<u>MLN</u>	<i>Modern Language Notes</i>
<u>MLR</u>	<i>Modern Language Review</i>
<u>N&Q</u>	<i>Notes and Queries</i>
<u>NS</u>	<i>New Series</i>
<u>OS</u>	<i>Original Series</i>
<u>PBA</u>	<i>Proceedings of the British Academy</i>
<u>PQ</u>	<i>Philological Quarterly</i>
<u>QR</u>	<i>Quarterly Review</i>
<u>RES</u>	<i>Review of English Studies</i>
<u>SS</u>	<i>Supplementary Series</i>
<u>TCBS</u>	<i>Transactions of the Cambridge Bibliographical Society</i>
<u>TRHS</u>	<i>Transactions of the Royal Historical Society</i>

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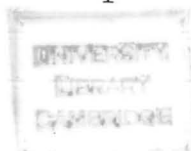
He had the happiness of being bred up in the school of adversity...excellent were his laws, and vigorously kept to; for he examined everything himself, impenetrable in his secrets....¹

Essay on King Alfred by
George III (when Prince of Wales)

In the panoply of English monarchs, whose achievements have captured the imagination, few stand more prominent than King Alfred the Great.² His reign saw the kingdom of Wessex survive a Viking onslaught which forced the other ancient kingdoms of East Anglia, Northumbria and Mercia into submission. At his instigation, religion and learning were actively promoted, and certain works which he considered 'most necessary for all men to know' were translated from Latin into the vernacular. He established a network of fortified sites for the defence of his kingdom; and instituted significant monetary reforms, undertaking two major recoinings in the first

¹ Quoted by Namier, in *England in the Age of the American Revolution*, p. 93.

² His personal reputation has enjoyed considerable embellishment over the centuries; reference to him using the appellation 'Great' does not occur before the mid-thirteenth century, and did not become common before the sixteenth. For details, see Keynes, 'A Tale of Two Kings: Alfred the Great and Æthelred the Unready', p. 195; cf. Stanley, 'The Glorification of Alfred King of Wessex', pp. 103-4 and 'The cult of King Alfred', in Keynes and Lapidge, *Alfred the Great*, pp. 44-48.



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decade of his reign, and expanding the network of mints.³ Yet of all Alfred's accomplishments, that which seems to have influenced his immediate successors most considerably is his law-code. It came to be known as *seo domboc* (the law or judgement book), and was cited directly in the law-codes of Edward the Elder, Æthelstan and Edgar.⁴

Two aspects of Alfred's law-code in particular merit close analysis: the first is the textual history of the code; and the second is the substantive law which it contains. This dissertation is concerned primarily with textual matters raised by the code in its various manuscript contexts, and it seeks to provide fresh foundations upon which a study of the substantive law may be constructed. The obvious place to begin an analysis of this kind is with the manuscripts themselves, for, as physical artefacts, they provide a direct and tangible link with the past. These manuscripts should not be

³ Blackburn, 'Alfred's vision for the coinage', and Grierson and Blackburn, *Medieval European Coinage*, pp. 307-16.

⁴ There are ten references to *seo domboc* in the corpus of Old English, four of which specifically refer to *Alfred-Ine*: (1) *II Edw.* 5.2; (2) *II As.* 5; (3) *II Edg.* 3; (4) *II Edg.* 5. In 'The Medieval Welsh Idea of Law', Dafydd Jenkins suggested that the reference to *domboc* at *II Edw.* 5 is comparable with Welsh *brawdlyfr*, and should be interpreted as a general reference to 'any book which contained judgements as to rules of law' (p. 345). I am not altogether convinced by this, since *II Edw.* 5 seems to be a general citation of *Alf.* 1 or *Alf.* 1.2. Cf. Richards, 'Elements of a Written Standard in the Old English Laws', pp. 8-9.

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regarded as necessarily typical of the law as it was issued, for they all emanate from ecclesiastical scriptoria, and they appear to be conscious acts of preservation rather than instruments of legislature. One hesitates to use the expression 'official law-books',⁵ for there is no direct evidence to suggest that the code ever existed in an 'official' form. To imply the existence of 'official law-books', presupposes the existence of scribes to copy them, and officials to receive them; and some scholars have been disinclined to assume the degree of literacy and administrative articulation which this would require.⁶ There is no doubt, however, that Alfred's code was conceived as a written text, composed in the vernacular. In a prologue (Bib. Int. 49.9), Alfred clearly stated that he 'ordered to be written down' (*awritan het*) many of the laws which his predecessors observed, and that he dared not presume 'to set down in writing' (*on gewrit settan*) many of his own decrees.⁷ Furthermore, ancillary evidence suggests that Alfred circulated other texts which he considered important to those in positions of authority. The copy of

⁵ Whitelock, *EHD*, p. 357.

⁶ See especially Wormald, 'The uses of literacy in Anglo-Saxon England and its neighbours'; Clanchy, *From Memory to Written Record*, pp. 12-17; Vollrath, 'Gesetzgebung und Schriftlichkeit: das Beispiel der angelsächsischen Gesetze'; but cf. Keynes, 'Royal Government and the Written Word in late Anglo-Saxon England'.

⁷ Keynes, 'Royal Government and the Written Word', p. 231.

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his translation of Pope Gregory's *Cura Pastoralis* which he sent to Bishop Wærferth of Worcester is extant (Oxford, Bodleian Library, MS Hatton 20); and so are later copies of the books which he sent to Bishop Heahstan of London (BL, MS Cotton Otho B.ii) and Bishop Wulfsize of Sherborne (Cambridge, University Library, MS Ii.2.4). It hardly requires an athletic leap of faith to suppose that Alfred may have adopted the same procedure for the circulation of his law-code. Yet one need not assume that the circulation of copies was a day-to-day occurrence, as the evidence suggests that King Alfred only issued two legal works: the first is his law-code; and the other, a quasi-legislative act, is the treaty between Alfred and the Viking leader Guthrum, who was defeated at the Battle of Edington in 878. This treaty purports to be the written record of an oral settlement, recording the terms agreed after Alfred occupied the city of London. It exists in two copies, both contained in the same manuscript (CCCC MS 383); and the differences between the two versions suggest that they may have been copied from different exemplars. This, of course, implies the multiplication of copies.

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In the *Life of King Alfred*, Asser described the interest and involvement of the king in the legal process.⁸ This description confirms the general impression conveyed by the law-code, namely that Alfred's concern for justice was real, and not simply the result of hyperbole on the part of his biographer. Asser's account also indicates that the operation of the Anglo-Saxon legal system could be *ad hoc*, a conclusion that is further recommended by the vignette in the 'Fonthill Letter', which reveals Alfred ruling on a matter of legal procedure while washing his hands in his chamber at Wardour.⁹ An acceptance of this evidence at face value need not diminish the status of the written text of the law-code, nor does it speak against the possibility that the code was circulated to the king's officials for their guidance. Indeed Asser's description suggests that Alfred regarded the literate 'pursuit of wisdom' by his officials as an intrinsic responsibility of office.¹⁰

⁸ Asser's comments about Alfred's involvement in legal matters, and their relevance to the production of his law-code, are considered further below; see Chapter Three, pp. 228-29.

⁹ The Fonthill Letter is Canterbury Cathedral Library, Chart. Ant. C 1282 (S1445). It has been edited and translated by Harmer, *Select English Historical Documents*, no. 18, pp. 30-32, 60-63 (notes, pp. 114-16), and is also translated in *EHD*, no. 102, pp. 544-46.

¹⁰ Asser, ch. 106. The Latin text is contained in Stevenson, ed., *Asser's Life of King Alfred*, p. 94; this translation is taken from Keynes and Lapidge, *Alfred the Great*, p. 110.

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As a result [of Alfred's commands] nearly all the ealdormen and reeves and thegns (who were illiterate from childhood) applied themselves in an amazing way to learning how to read, preferring rather to learn this unfamiliar discipline (no matter how laboriously) than to relinquish their offices of power.

This passage is unambiguous, and there is no reason to suppose that it represents anything less than a statement of fact, despite an obvious use of *topoi*.¹¹ It must, however, be viewed in context. For Asser begins the chapter by stating that Alfred 'used to sit at judicial hearings for the benefit both of his nobles and of the common people, since they frequently disagreed among themselves at assemblies of ealdormen or reeves'. Alfred's presence at these assemblies, which recall those described in his law-code (*Alf.* 22, 34 and 38), was compelled by the fact that litigants were unhappy with the judicial process, preferring to 'submit to the king's justice' rather than that dictated by his officials. Similarly, in the Fonthill Letter, it was only following Alfred's personal recommendation that Helmstan was permitted to proceed to an oath in defence of his claim. This letter, which is addressed to Edward the Elder (899-924) by an unnamed author (almost certainly the Ealdorman Ordlaaf), recounts the events which occurred over a period

¹¹ Patrick Wormald has observed that 'Asser's language is almost identical here with that in which he described Alfred's own quest for the wisdom of Solomon: a perception of God which brings earthly blessings, rather than a technical qualification for good government' (see 'The Ninth Century', p. 157).

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of approximately two years (between 897 and 901), encompassing both King Alfred's death and his son's accession. In it, Ordlaaf explained how he obtained title to an estate at Fonthill in Wiltshire, which was subject to a claim by Æthelhelm Higa. The letter looks remarkably like a written submission concerning a disputed legal matter, and although exceptional among the corpus of extant Anglo-Saxon private documents, it contains a great deal of information relevant to the operation of the legal system in Alfredian England. In an aside, Ordlaaf asked King Edward:¹²

And, Sire, when will any suit be ended if one can end it neither with money nor with an oath? And if one wishes to change every judgement which King Alfred gave, when shall we have finished disputing?

For this comment to have any rhetorical force, one must assume that Alfred made so many decisions, whether personally or through his officials, that near-anarchy would have resulted if they were all set aside. The precise cause of Ordlaaf's irritation is not clear, but it appears that Æthelhelm Higa may not have accepted the decision of Alfred allowing Helmstan to prove his suit by oath-taking and compurgation. Furthermore, it suggests that Higa may have pursued the matter even after its resolution; perhaps he was attempting to take advantage of Alfred's death by again pressing his cause against the

¹² Whitelock, *EHD*, no. 102, p. 545.

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Bishop of Winchester to whom Ordlafe gave the estate. In any event, it appears that Ordlafe's submission to the king yielded results, for an endorsement on the document indicates that Æthelhelm 'withdrew his suit when the king was at Warminster'.¹³ One imagines that having had the facts put before him by one of his senior officials, Edward acted swiftly, asserting his authority (and that of his deceased father, King Alfred), supporting his ealdorman, and ensuring that the legal process was not undermined.

One cannot help but wonder whether the issuing of a written law-code made any substantial difference to the operation of the legal system as described by Asser, and revealed in the Fonthill Letter. Yet one might also ask (with no greater hope of an answer) whether the bishops undertook their pastoral responsibilities any more diligently having received from Alfred a translated copy of Pope Gregory's manual on the subject. Certainly the Anglo-Saxon law-codes were not cited directly in the extant records of dispute settlement, even though several descriptions of litigation exist for matters which fall

¹³ As Keynes observes in his forthcoming consideration of this document, there is reason to believe that the single sheet which has survived is the original letter sent to Edward the Elder. It is written in square minuscule script, of a character consistent with its date, and the outcome of the matter was entered on the dorse in a different (but contemporary) hand.

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directly within the sphere of a particular code.¹⁴ This may, however, be less of a problem than it seems, for one of the central characteristics of the Anglo-Saxon legal system is a concurrent operation of law and custom. In this respect Anglo-Saxon law is not unique; indeed Hermann Nehlsen observed that some of the references to *Lex Salica* in the Frankish charters are not to '*Lex Salica scripta*' but to the unwritten Frankish law.¹⁵ The citation of a law-code certainly provides positive evidence of its use, but lack of citation does not necessarily prove that the written laws lacked a practical application. This need not undermine Wallace-Hadrill's suggestion that the Anglo-Saxon laws served an ideological function comparable with the 'enhancement of kingship' achieved when the Carolingian kings assembled their *Volksrechte*.¹⁶ On the other hand, the making of law by a king in council is inherently an act of sovereignty, enhancing the authority of the law-maker over those for whom the laws are made.¹⁷ The overriding question is: how

¹⁴ Wormald, 'The uses of literacy in Anglo-Saxon England and its neighbours', p. 113, and 'Æthelred the lawmaker', p. 48. On the citation of law in Lombard-Carolingian Italy, see Wickham, 'Land disputes and their social framework', pp. 112-14.

¹⁵ Nehlsen, 'Zur Aktualität und Effektivität germanischer Rechtsaufzeichnungen', p. 463. See also McKitterick, *The Carolingians and the Written Word*, pp. 37-38.

¹⁶ Wallace-Hadrill, *Early Germanic Kingship*, p. 149.

¹⁷ Hart, *The Concept of Law*, pp. 24-25.

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did the Anglo-Saxons perceive their laws, and how were the law-codes used once promulgated? In the case of that issued by King Alfred, near-contemporary evidence is compelling. The references to *seo domboc* in the laws of Alfred's successors suggest that the code continued to be used, and was held in high regard, long after its composition. Its effect on the legal process was both real and intended.

In any consideration of the Anglo-Saxon legal system, one naturally tends to regard the extant law-codes as the principal repositories of information about pre-conquest legal practice; and one supplements the evidence which they provide with that offered by other extant administrative documents and non-legal sources. Since custom was unwritten, the temptation is to forget that customary law existed on equal terms with the written codes. One could, indeed, argue that in primitive societies custom is the stronger force; like religion, it is upheld and maintained by a concerted community pressure, and it is enforced ultimately by those in authority.¹⁸

The first explicit reference in English legislation to a concurrent existence of written and unwritten law

¹⁸ On the concurrent operation of custom with written law in a modern jurisdiction, see Powles, ed., *Pacific Courts and Justice*, esp. pp. 95-97. One must also be aware of the possibility that law-codes were issued orally in Anglo-Saxon England, without publication in writing.

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occurs in the *Leges Henrici Primi* (cap. 4.3a), where it is stated that:¹⁹

Institutio equitatis duplex est: in lege scripta, in moribus uel communi usu pro lege suscepto.

It is probable that this observation simply recorded a well-established fact, for one of the principal sources of the *Leges Henrici* was Anglo-Saxon law.²⁰ There are several references in the corpus of Anglo-Saxon law-codes to *folcrist*, where the word seems to refer to unwritten customary practice. For instance, in *I Edw. pro.*, reeves are ordered: 'Ne wandiað for nannum ðingum folcrist to geregceanne' ('Do not for any reason fail to interpret the *folcrist*'). Similarly, in Alfred's will, the king describes how he put the matter of his brother's intestacy before the West Saxon *witan*, commanding 'þæt hyra nan ne wandode ne for minan lufan ne for minum ege þæt hy þæt folcrist arehton' ('that none of them for love or fear of me should hesitate to declare what was the *folcrist* in such a case'). Legal custom was obviously a recognized source of law in the ninth century, and these provisions show one something of its operation. Moreover, they are entirely consonant with the situation described in the Fonthill letter, and with that recounted by Asser,

¹⁹ Downer, ed., *Leges Henrici Primi*, pp. 82-83.

²⁰ Downer reasserted the possibility that the author of the *Leges Henrici Primi* was also responsible for a twelfth-century translation of the Anglo-Saxon laws, known as *Quadripartitus* (*Ibid.*, pp. 23-28).

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where disputes were apparently settled by a just application of *folcright*.

In *The History of English Law*, Sir Frederick Pollock suggested that 'the written Anglo-Saxon laws...are mere superstructures on a much larger base of custom', and that their role was 'to regulate and amend in details now one branch of customary law, now another'.²¹ This is accurate only in the sense that the written texts provide a far from comprehensive statement of law. Their primary function was not so much to 'amend' customary law as to supplement it, emphasizing, by the act of promulgation, those matters which were considered especially important. In the case of *Alfred-Ine*, the reasons for issuing the law-code are made abundantly clear in a prologue (Bib. Int. 49.9). Alfred explains how he gathered laws from different sources, and was reticent to add many new provisions, as he was unsure what would please his successors. The law-code is deliberately and expressly a codification of earlier written law: the first in English legal history. Yet it is more than this, for Alfred's code is also a didactic work, containing the earliest extant vernacular translation from the Bible in England.²² These two functions, the preservation of

²¹ Pollock and Maitland, *The History of English Law*, I, p. 27. In a letter to Paul Vinogradoff, Maitland wrote of Pollock's contribution: 'F.P....has written an Anglo-Saxon chapter. *Between ourselves* I do not like it very much...'. (see Fifoot, ed., *The Letters of Frederic William Maitland*, no. 109, p. 103).

²² On this translation, see Chapter Three below, pp. 212-36.

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established law and didacticism, are entirely compatible. As one learns from Asser, Alfred considered the pursuit of 'wisdom' to be an essential precursor to any exercise of authority, and, as Alfred implies in the prologue to his law-code, there is much wisdom to be found in old law. The *domboc* may be different from other Anglo-Saxon law-codes; it is certainly a larger and more developed production. Yet, in form, it is no less a royal directive than *I Edw.*, which was sent by King Edward the Elder to all of his reeves, commanding 'ǣt ge deman swa rihte domas swa ge rihtoste cunnon, ⁊ hit on ǣre dombec stande' ('that you pronounce such legal decisions as you know to be just, and in accordance with the *domboc*'). This does not mean that reeves were to brandish their law-books before offenders at formal judicial hearings; it simply implies that the law-codes were sent to the king's officials, bringing matters of particular importance to their attention.

There is no mention of Alfred's law-code in Asser's *Life*, which (to judge from ch. 91) was written in 893.²³ This does not categorically prove that the code was promulgated after this date; but one might have expected Asser to mention it, if it had existed, when he described

²³ For details, see Keynes and Lapidge, *Alfred the Great*, pp. 269-70, n. 218.

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King Alfred's legal and judicial activities.²⁴ On general historical grounds, the law is unlikely to have been composed before the 880s, since Alfred was preoccupied in the 870s with the defence of his kingdom. It was in the 880s that Alfred began attracting scholars to his court; the first translation, probably of the *Cura Pastoralis*, may have been completed 'by as early as 890'.²⁵ Thus, it is quite possible that Alfred ordered the composition of his law-code at or about the same time that he launched the programme of translation. This may, in part, explain the inclusion of the Biblical Introduction. If, however, one wishes to see the influence of Fulco in his passage on synods (Bib. Int. 49.7), one would have to date the code after c. 886-87.²⁶

The aim of this dissertation is a simple one: to assemble evidence relating to the text of *Alfred-Ine* as it has been transmitted, and to work through it in a logical progression. Thus, in the first chapter, the surviving manuscripts are examined individually; while the following chapter, on the textual transmission, establishes that these codices are descended by at least two distinct routes from the archetype. The complexity of

²⁴ Cf. Keynes and Lapidge (*Ibid.*, p. 304) who suggested that: 'It would be strange if the king...had not already set about codifying the law at the time Asser was writing'.

²⁵ *Ibid.*, p. 35.

²⁶ See Whitelock, *EHD*, no. 223, p. 883.

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the textual transmission reflects the fact that this code was considered important enough to be copied after its promulgation at least once in every century up to the twelfth. The third chapter of this work addresses the structure of the code, in the light of evidence raised in the previous two chapters.

From the textual history one may infer that the surviving law-code is akin to that issued by Alfred; nevertheless, it exhibits certain peculiar features, and these cannot be ignored. For example, the law-code begins with a list of rubrics (or chapter-headings). These rubrics appear to serve no particular function, since they do not reflect the contents of the code accurately or comprehensively, nor is every important provision given a rubric. Worse still, they frequently misrepresent the central point of a law. Yet the composite code achieves its artificial sense of unity by means of this list of chapter-headings, and one must therefore ask who composed it and why. Similarly, the Ine appendix contradicts Alfred's law in several places. This is also a problem if, as the rubrics imply, *Alfred-Ine* was intended to be read as a single text. One must therefore examine the Ine appendix, with a view to explaining its inclusion. It may be that it is nothing more than Alfred's commemoration of his West Saxon predecessor; or it may have been included for its legal content as a

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binding authority. Indeed, if the rubrics were composed by someone other than the author of the code, one must admit the possibility that Alfred never intended Ine's code to be read as an integral part of his law-book. These matters are relevant to the study of Anglo-Saxon legal history, because one must assess whether Ine's code is unadulterated before tracing the evolution of the substantive law.

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The edition (which is included as an appendix to this dissertation) seeks to make the text of *Alfred-Ine* accessible to a wide range of scholarly interests. While nothing can undermine the achievement of Felix Liebermann, his text is so complex that Maitland was prompted to compare it with 'the full score of an opera'.²⁷ Yet if the design of Liebermann's edition is expansive, the style of his notes is precisely the opposite; again to use Maitland's words 'in his desire for compression he became algebraic'.²⁸ Liebermann certainly recognized this, for in a letter to a friend he acknowledged that 'the style remains terribly hard in many places'.²⁹ Even in 1913, before Liebermann's *Gesetze*

²⁷ Maitland, 'The Laws of the Anglo-Saxons', p. 152. The passage is quoted in its entirety in the appendix, pp. 343-44.

²⁸ *Ibid.*, p. 153.

²⁹ Quoted by Tout in 'Felix Liebermann (1851-1925)', p. 317.

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was fully complete, Professor H.W.C. Davis appealed:³⁰

But is it too much to hope that Dr. Liebermann will some day produce a simpler and cheaper edition, giving merely the oldest text of every law with a limited number of critical annotations?

The editions of Attenborough and Robertson filled this lacuna, but, as suggested in the introduction to volume two of this dissertation, these editions achieved their accessibility through unacceptable compromise, and one cannot confidently rely upon their texts.

Although a remarkable scholar, Felix Liebermann (1851-1925) was not the only member of his generation to influence our knowledge and understanding of England's legal history. The works of Frederic William Maitland (1850-1906) had an even more profound effect upon the subject; and just as Maitland laid the foundations for all subsequent study of post-Conquest legal history, so did Liebermann provide the basis for all modern study of law in England up to the reign of Henry I. Since Maitland's day the study of England's later legal history has advanced considerably, but the same cannot be claimed for Anglo-Saxon legal studies. Of course there have been significant contributions to knowledge in this field, not least by Sir Frank Stenton and Professor Dorothy Whitelock. Yet as early as 1913, H.D. Hazeltine was

³⁰ Davis, 'The Anglo-Saxon Laws', p. 423.

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calling for a 'far longer and more elaborate history of the growth of law' in Anglo-Saxon England to replace the 'short sketches' of Pollock, Maitland and Holdsworth.³¹ Death prevented Liebermann from undertaking this task, a deprivation mourned by Sir William Holdsworth.³²

If he had lived, he could have written a history of English law before the Conquest in a manner and with an authority that no other scholar could approach.

Happily the laws are beginning to receive the attention which they deserve. Seventy-five years later, Hazeltine's call is to be answered by Patrick Wormald, whose book, provisionally entitled *The Making of English Law: King Alfred to the Norman Conquest*, is eagerly awaited.³³ It is to be hoped that the publication of this work will stimulate a renewed interest in the study of Anglo-Saxon legal institutions. If so, new and accessible texts and translations will be required to facilitate this work.

³¹ Hazeltine, 'The Laws of the Anglo-Saxons', p. 395.

³² Holdsworth, *The Historians of Anglo-American Law*, p. 128.

³³ I have been privileged to read several chapters of this book in draft form, and it should go without saying that I have benefitted greatly from this opportunity. As his work is still incomplete, I have tried to avoid pre-empting Mr Wormald's arguments in this dissertation.

CHAPTER ONE. THE MANUSCRIPTS

INTRODUCTION

The textual history of *Alfred-Ine* provides one indication of the high regard in which this law-code was held throughout the Anglo-Saxon period. The multiple references to *seo domboc* in the codes of Alfred's tenth-century successors have been mentioned above; the complexity of the textual transmission, which is the subject of the next chapter, affords further evidence that the law continued to be copied and disseminated long after its promulgation. *Alfred-Ine* exists in more versions than any other Anglo-Saxon law-code, and it was copied at least twice after the Conquest. This is fortuitous, but not entirely accidental. One might reasonably suppose that the manuscripts containing *Alfred-Ine* stood no better chance of survival than those of any other Anglo-Saxon law, and thus one might conclude that this law-code enjoyed greater currency than was usual throughout the period.

A careful consideration of the evidence of the manuscripts is an essential precursor to any interpretation of the textual transmission, for one can only make reasoned assumptions about the relationship between the manuscripts when their provenance and date has been considered. Moreover, one should only undertake an analysis of the substantive law when the information provided by the manuscripts has been thoroughly digested.

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Manuscripts can tell one something about the state of a code at given times after its promulgation, and the character of the collections may also reveal evidence pertaining to the contexts of their use. Unfortunately Anglo-Saxon England cannot boast manuscripts of law heavily annotated by practitioners, such as those which have survived from Carolingian France,¹ but only fifteen manuscripts containing vernacular versions of the Anglo-Saxon laws have survived. Given that this material was invariably composed, transmitted, and used in a vernacular context, over a period of five centuries, this suggests that the manuscripts have suffered a high rate of attrition.

One should therefore be wary of drawing conclusions about the operation of the Anglo-Saxon legal system on the basis of those manuscripts which have survived. Of course they are all that we have, but it is improbable that they convey a full and accurate picture of how the law-codes were transmitted throughout the Anglo-Saxon period. Mary Richards has asserted that:²

The manuscript contexts of the laws provide new evidence for their use as instructional materials.

¹ See McKitterick, 'Some Carolingian law-books and their Function', and *The Carolingians and the Written Word*, pp. 40-60.

² Richards, 'The Manuscript Contexts of the Old English Laws', p. 187.

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Looking at the selection and arrangement of codes within legal collections, we can see that many of these materials were meant for communication to the laity in an ecclesiastical setting.

Certainly the extant manuscripts are all of a comparable type; all emanate from monastic or episcopal scriptoria, and many combine law-codes with homilies or historical texts. Yet of their function and use, one can but guess. Generally they convey an impression of having been written as matters of record rather than works of reference, although an exception to this general rule is the second part of BL, MS Cotton Nero A.i, which appears to have belonged to, and been used by, Archbishop Wulfstan. As advisor to both Æthelred the Unready and Canute on matters of polity and law, Wulfstan was actively involved in the legal process; this manuscript, which is compact (and thereby easily portable), has annotations in a hand which is thought to be that of Wulfstan himself.³ Taken alone, neither of these two attributes is unique to the corpus of legal manuscripts (let alone those codices with Wulfstan connections), but taken together they are unusual. Bishops were just as important in shire-courts as ealdormen, and one imagines that this is precisely the type of collection which would have been useful in such a context. One certainly cannot rule out the possibility that other working copies of the

³ Ker, 'The handwriting of Archbishop Wulfstan', pp. 221-24.

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codes existed, but have not survived; like all books, the manuscripts which fall apart first are those which are poorly made, or subject to the most rigorous and regular use. Many of the law-codes survive in manuscripts which are several generations younger than the law which they contain; and, as Dorothy Whitelock observed, if one removes from a list of the extant law-codes those which owe their survival to 'the interest taken in law by Wulfstan and the fortunate preservation of manuscripts from Worcester [or York]', then almost nothing remains.⁴ The same could also be said of the post-Conquest compilations (B and H). Any hypotheses about the use of the codes, based on the contexts of their preservation, must therefore take these factors into consideration.

This chapter does not attempt to explain the rationale behind the formulation of these collections; such matters are discussed, where relevant, in Chapter Three. The scope of this chapter is deliberately restricted to an examination and description of the manuscripts in detail, since previous editors have described them almost in passing, and other available descriptions are necessarily limited.⁵ While there is much that can and should be said about the manuscripts

⁴ Whitelock, *EHD*, p. 359.

⁵ Liebermann's descriptions (*Gesetze*, I, pp. xviii-xlii) are more extensive than most, but they need revision in the light of research over the past century.

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containing the Anglo-Saxon laws, the scope of this work requires that attention is focused primarily on the different versions of *Alfred-Ine* in their manuscript contexts.⁶ These manuscripts, together with the transcripts by Nowell which have reappeared over the past sixty years, are listed below, and described individually.⁷

TABLE 2
MANUSCRIPTS CONTAINING THE TEXT OF *ALFRED-INE*

ANGLO-SAXON PERIOD

- (1) CAMBRIDGE, CORPUS CHRISTI COLLEGE, MS 173 (E)
- (2) LONDON, BRITISH LIBRARY, MS COTTON OTHO B.xi (Ot)
- (3) LONDON, BRITISH LIBRARY, MS COTTON NERO A.i (G)

ANGLO-NORMAN PERIOD

- (4) LONDON, BRITISH LIBRARY, MS BURNEY 277 (Bu)

⁶ As E.G. Stanley put it in a review of Mary Richards' article: 'The extant manuscripts of the Anglo-Saxon laws deserve comprehensive, new, book-length treatment by, or directed by, an expert'. See *MLN* 84 (1989), 911-12.

⁷ The possibility must also be entertained that other manuscripts of *Alfred-Ine* exist, but have not yet been located. In a catalogue of Sir Henry Spelman's manuscripts (Norwich, Norfolk Records Office, MS 7198) two entries are listed under the description 'Leges Alfredi Reg.' (items 124-25). Both of these were sold by J. Harding at a sale of Spelman's books on 28 November 1709 (see BL, MS Harley 7055, ff. 232-39), but their subsequent history cannot be ascertained.

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- (5) MAIDSTONE, KENT COUNTY ARCHIVES OFFICE, MS DRc/R1
formerly Rochester Cathedral Library, MS A.3.5,
the *Textus Roffensis* (H)
- (6) CAMBRIDGE, CORPUS CHRISTI COLLEGE, MS 383 (B)

THE NOWELL TRANSCRIPTS

- (7) LONDON, BRITISH LIBRARY, MS ADDITIONAL 43703 (Nw1
and Nw2)
 - (8) CANTERBURY, CHRIST CHURCH CATHEDRAL LIBRARY, MS
LITERARY B.2 (Nw3)
 - (9) LONDON, BRITISH LIBRARY, HENRY DAVIS COLLECTION,
[MS] M30 (Nw4)
-

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- (1) CAMBRIDGE, CORPUS CHRISTI COLLEGE, MS 173,
ff. 33r-52v, complete: E (Ker no. 39)
-

CONTENTS

This fascinating and complicated manuscript contains the oldest version of King Alfred's law-code, preserving linguistic forms closest to those of the Alfredian period.⁸ It also contains a West Saxon royal genealogy (f.1r), the A-version of the *Anglo-Saxon Chronicle*, and the *Acta Lanfranci* (ff. 1v-32v), lists of popes, archbishops of Canterbury and other English bishops (ff. 53r-55v), works by Cælius Sedulius including the *Carmen Paschale* with Old English glosses (ff. 57r-81r), the hymn *A solis ortus cardine* (ff. 79v-80r), verses of Damasus on Paul (f. 81rv), another hymn (*Cantemus socii domino*) on ff. 81v-82v, and extracts from Augustine of Hippo's *De ciuitate Dei* (ff. 82v-83v).

⁸ The *Chronicle* and laws section of this manuscript (ff. 1r-56v) is available in facsimile: Flower and Smith, eds., *The Parker Chronicle and Laws* (Oxford, 1941). On the language, see Bately, ed., *The Anglo-Saxon Chronicle*, pp. cxxxii-clx. Most of what Bately says about the early West Saxon forms in the *Chronicle* holds true for the version of *Alfred-Ine*. A study of the language of the manuscripts is beyond the scope of this dissertation.

Lega Aluredi

36

RYHTEN YÆS SPRELEN

de ðarponð to moxre þuſcpeð. ſeðm
 dprhtan dingoð. ſeðe ut ſe lædde of egipta
 londe iofhiona ðwop dome. ſe lufa du ofne
 fpande godaſ of ſime. neminne noman necig
 du omidelnære. forðon þe dune biſt unſcylðig
 pridme geðu omidelnære. ciſt minne noman.
 ſe myne þæt dū ge halgige þone niſte dæg. þy
 ceað w. vi. dagaſ ion þam riopodan niſtad w.
 forðam on vi. dagaſ. ciſt geſonhte hæronaſ ſwondan
 þæt ſealle geſceapta þe on him ſint. þine geſte
 on þone riopodan dæg. þforðon dprhtan hine. ge
 halgode. Alia ðinum fæder þinne meoðer dæte
 dprhtan ſealde þæt dū ſe þrlang libbende anwpan.
 Ne ſleah dū nelige dū deapnhta. Ne ſtala dū ne
 riſe dū leaſe geſt nære. Ne ſilna dū þin geſtan
 iſp. mid unprhte. Ne pricde ſcrlone godaſ
 oððe þrlpane. þy ſint ða domaſ þe dū him ſe
 tan ſcealt. Siſlipa gebrcege cprhtanne þw. vi.
 geap. ðwopige he ðr riopodan bawe. þw. on cea
 punga. mid ſpelce hpaðle he mæde. mid ſpelce
 gange he ut. Siſ he þy ſelf hæbbe. gange hio ut
 mid him. Siſ he hlaforð him þon þy ſealde. þe hio
 þine bearn þæt hlaforð. Siſ he þw. þon

PLATE 1

 CORPUS CHRISTI COLLEGE,
 CAMBRIDGE, MS 173, f. 36v

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DATE

The different sections of this manuscript were written at different times. Ker suggested that the text of the *Anglo-Saxon Chronicle* was begun 'about the year 900', though 'it was continued at intervals during the tenth century'.⁹ Parkes dated the first 'booklet' (quires I-III) to 's. ix ex. extended into s. x in.', and the first hand to the last decade of the ninth century.¹⁰ Dumville has indicated that he prefers to date this hand, which he has described as 'Proto-Square minuscule' to the early tenth century.¹¹ Despite this difference of opinion, and irrespective of whether the codex was begun in Alfred's lifetime or shortly thereafter, there is a general consensus when it comes to dating 'booklet three' (quires V-VI) to around the middle years of the tenth century. These are the quires which contain the text of *Alfred-Ine*, and as such this copy of the code is the earliest surviving copy of any English secular law.

⁹ Ker, *Catalogue*, no. 39, p. 57. It is also described in James, *A Descriptive Catalogue*, I, pp. 395-401.

¹⁰ Parkes, 'The palaeography of the Parker manuscript', pp. 153-54 and p. 167.

¹¹ Dumville, 'English Square minuscule script', pp. 163-65.

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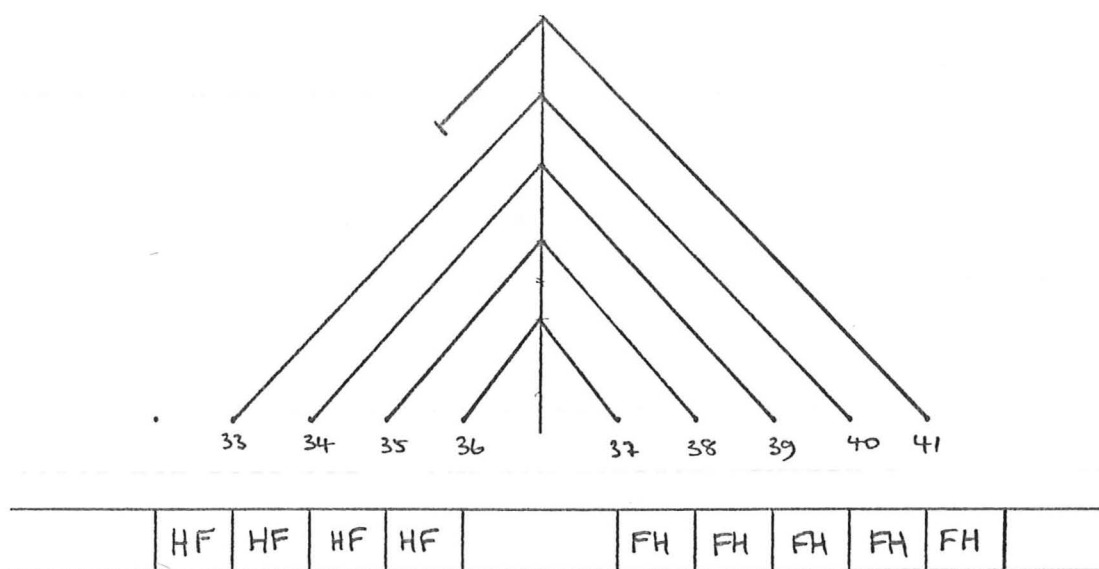
DESCRIPTION

Collation

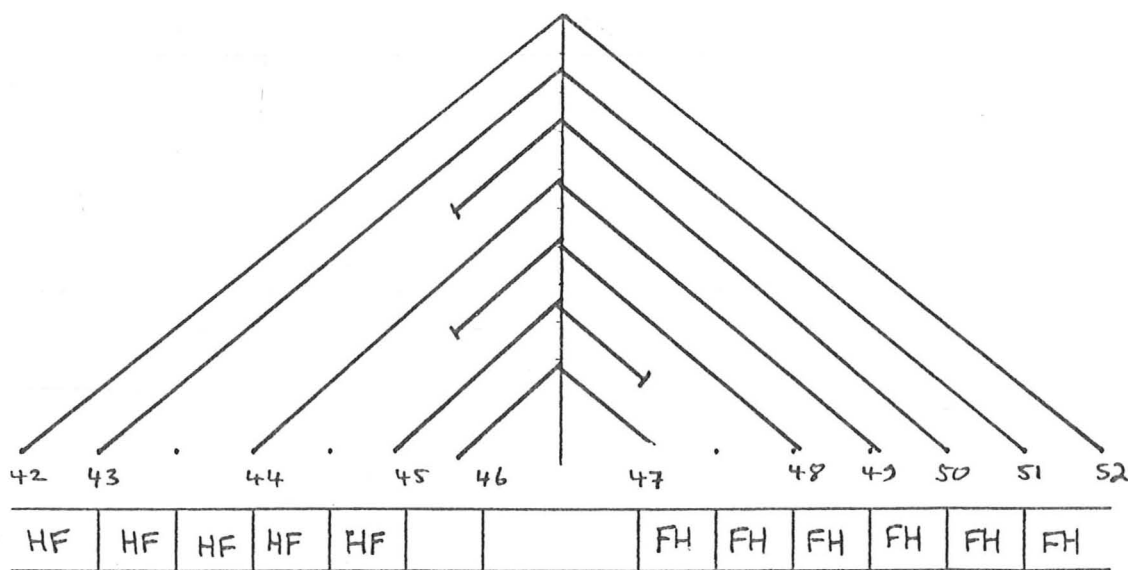
V¹⁰ (1 canc.; ff. 33-41), VI¹⁴ (wants 3, 5, 9; ff. 42-52)

FIGURE 1
DIAGRAMMATIC REPRESENTATION OF THESE QUIRES

QUIRE V



QUIRE VI



THE MANUSCRIPTS

In his discussion of the codicology of this manuscript, Parkes suggested that it is comprised of 'five separate "booklets", each of which was originally conceived as a complete, self-contained unit'.¹² This description is concerned only with the so-called 'booklet three' (ff. 33-52), which contains the text of *Alfred-Ine*. It is composed of two quires, containing a total of twenty leaves (the complete manuscript contains eighty-three leaves). These quires are described above, and illustrated diagrammatically.¹³ The leaves measure approximately 285mm x 210mm, the written space approximately 215mm x 145mm. There are double bounding lines eleven millimetres apart, and (usually) twenty-five lines per page (ff. 33v-34v contain twenty-six lines of text). The pattern of membranes for both quires is hair-side outside.¹⁴ The colour of the ink varies from light brown to dark brown. Parkes has asserted:¹⁵

The booklet containing the laws of Alfred and Ine was copied by two scribes, both of whom used a later version of the new minuscule:

¹² Parkes, 'The palaeography of the Parker manuscript', p. 149.

¹³ My collation differs from that of Parkes ('The palaeography of the Parker manuscript', p. 150) and Bately (*The Anglo-Saxon Chronicle*, p. xvi), but it agrees with that of Dumville and Keynes ('Appendix by the General Editors', in Bately, *Ibid.*, pp. clxviii-clxix).

¹⁴ I am indebted to Dr Mildred Budny of the Parker Library for examining these quires using a microscope, and for confirming the pattern of membranes given overleaf.

¹⁵ Parkes, 'The palaeography of the Parker manuscript', p. 166.

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one who was responsible for the first page of the list of capitula and one who was responsible for the rest of the booklet.

He gives no grounds for this assertion, and does not mention that most (if not all) of the letter forms used on f. 33r occur on subsequent folios.¹⁶ The upright shape of the initials used to begin the capitula, and the triangular clubbing at the top of the ascenders, is consistent throughout the list of chapter-headings. Also the nib-width on both sides of f. 33 appears identical. Thus, until better grounds are given for concluding otherwise, this editor contends that 'booklet three' is the work of a single scribe.¹⁷ The text is punctuated throughout using the raised point ('.'), the *punctus eleuatus* ('. / '), the *punctus uersus* (';') and two terminals (';') and (': / '). The capitalization is irregular; on many occasions the scribe of E failed to

¹⁶ The source of Parkes' contention that two scribes wrote this version of *Alfred-Ine* may be an article by Bishop entitled 'An Early Example of the Square Minuscule', where it is stated that 'the first page of the capitula (f. 33r), the work of another scribe, shows some awkwardness' (see *TCBS* 4, part 3 (1966), p. 247).

¹⁷ On f. 33r the scribe placed a *punctus eleuatus* at the end of most rubrics, while on later folios this occurs only irregularly. The use of punctuation and capitalization throughout the manuscript is irregular, and this discrepancy on its own does not afford good grounds for alleging a change of scribe. I am indebted to Dr Budny of the Parker Library for her opinion on this matter. Dr Budny also finds no great distinction between the recto and verso of f. 33.

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indicate the beginning of a new clause with an initial.¹⁸ The initial 'D' of 'DRYHTEN' (f. 36r) was written in red pigment which has faded considerably. This is the only colour used to decorate the 'booklet'.

There are quire signatures clearly visible on f. 25v ('c'), and f. 42r ('e'). The remains of a quire signature ('a') is perhaps visible on f. 7v. The quire signatures 'c' and 'e' suggest that 'booklet three' (ff. 33r-52v) originally followed 'booklet one' (ff. 1r-25v). The first booklet (which ends with the quire signature 'c' on f. 25v) is made up of three quires, and 'booklet 2' (ff. 26r-32v) consists of only one quire (q. IV). If one assumes that the first quire of *Alfred-Ine* (q. V) bore the quire signature 'd' on its first leaf (now lost), then at the time when the signatures were added (according to Parkes, in the tenth century),¹⁹ the text of *Alfred-Ine* must have followed immediately after the *Chronicle* annals to 924 (for 920). Since the quires containing *Alfred-Ine* are now the fifth and sixth in the manuscript, it follows that the present fourth quire (containing the annals from '925' to 1070 and the *Acta*

¹⁸ The following list indicates where at least one of the other manuscripts uses a capital for the beginning of a clause but E does not: Bib. Int. 2, 6, 8, 11, 12, 12, 28, 33, 34, 39, 43, 49.2, 49.3, 49.5, 49.8; *gif* E (for *Gif*): *Alf.* 4.1, 7.1, 8.1, 8.2, 8.3, 11.1, 11.2, 11.3, 11.4, 11.5, 27.1, 35.4, 35.5, 35.6, <36.2>, 37.1, 37.2, 39.1, 39.2, 42.1, 42.3, 42.4, 44.1, 46.1, 47.1, 49, 49.1, 50, 62.1, 63, 64, 64.1, 67.1, 69.1; *Ine* 34.1, 36.1, 74.1, 76.3 etc.

¹⁹ Parkes, 'The palaeography of the Parker manuscript', p. 150.

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Lanfranci) must have been added after the writing of the quire signatures. Precisely when this occurred is uncertain, since the annals for '925' to 946 were probably written retrospectively.²⁰ The possibility that the 'booklet' containing the works of Sedulius was not added to the manuscript until the sixteenth century must also be admitted.²¹

PROVENANCE

The early history of this manuscript continues to be disputed. The codex was certainly at Canterbury by the late eleventh century, where it was used by the scribe of the F-version of the *Chronicle*, who made many interpolations from the archetype of the E-version. To make room for these additions, certain passages in the manuscript were erased, and these are known only through a copy of this book made at Winchester before it was removed to Canterbury. This copy of the A-version of the *Chronicle* in its pre-Canterbury state is known as the G-

²⁰ For a discussion of the palaeography of this section, see Bately, *The Anglo-Saxon Chronicle*, pp. xxxiv-xlii.

²¹ The Parker Register does not mention the Sedulius, nor was it copied into Ot in the eleventh century. For details see Page, 'The Parker Register and Matthew Parker's Anglo-Saxon Manuscripts', pp. 9-11.

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version; it is contained in BL, MS Cotton Otho B.xi (my no. 2), which also contains the second oldest copy of *Alfred-Ine*. This is a fact of some importance, for although the relationship between the A-version and the G-version of the *Chronicle* is clearly established, it is impossible to prove categorically that the Ot version of *Alfred-Ine* was copied directly from the Parker manuscript.²²

All further discussion of this codex (described by Wormald as 'the most-discussed non-liturgical manuscript in early English studies') is based on supposition.²³ In the introduction to her revised translation of the *Chronicle*, Dorothy Whitelock wrote that the scribe who added the annals for 925 to 955 'was certainly writing at Winchester'.²⁴ Without doubt, some of these annals confer special distinction upon that city: in annal 964 the word 'ceaster' (city) is used specifically to designate Winchester (but as much is clear from the context); and the accession of Frithestan to the see of Winchester in 909 is marked in the *Chronicle* by a prominent cross within a circle (f. 20v), although this is not

²² See below, 'The Textual Transmission', pp. 126-39.

²³ Wormald, *The Making of English Law* (forthcoming).

²⁴ Whitelock *et al.*, eds., *The Anglo-Saxon Chronicle. A Revised Translation*, p. xi.

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necessarily original.²⁵ By comparing the script of this manuscript with other codices having 'known' Winchester connections, Parkes has greatly augmented the evidence traditionally used to argue a Winchester origin for this quire (q. IV); indeed he has gone so far as to suggest that the manuscript was entirely written at Winchester.²⁶ Yet this attribution has not gone unchallenged, nor has Parkes' broader assertion that 'this Winchester scriptorium seems to have pioneered and propagated new standards and new models of handwriting'.²⁷ David Dumville has argued that the palaeographical innovations which took place during the tenth century were 'developing concurrently at a number of centres' and were not centred solely upon Winchester. Furthermore he has called into question some of the palaeographical comparisons made by Parkes.²⁸ Thus, the best that one

²⁵ The quires containing the *Sedulius* ('booklet five') are headed 'FRIDESTAN Diacon', and it has been suggested that Deacon Frithestan and Bishop Frithestan are one and the same. For details see Parkes, 'The palaeography of the Parker manuscript', p. 162.

²⁶ See Parkes, 'The palaeography of the Parker manuscript', pp. 153-63. Cf. Ker, *Catalogue*, no. 40, p. 59, who wrote: 'The earliest parts of art. 1 (quires 1-3) may not have been written at Winchester, but the rest of art. 1 and arts. 2, 3, 5 were no doubt added there at intervals during the tenth century and shortly after 1000'.

²⁷ Parkes, 'The palaeography of the Parker manuscript', p. 163.

²⁸ Dumville, 'English Square minuscule script', pp. 164-67 and p. 172. To judge from the notes in the introduction to Batley's edition of the Parker Chronicle, Parkes' case will encounter further and more detailed opposition with the appearance of Dumville's *Wessex and England from Alfred to Edgar* (forthcoming).

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can safely conclude is that at some time before its removal to Canterbury (perhaps by Ælfheah of Winchester who became Archbishop of Canterbury in 1006), this manuscript may have been located at Winchester.²⁹ The possibility that it was written there cannot be proven conclusively, but neither can it be steadfastly rejected.

The post-Reformation history of the manuscript has been examined by Bately.³⁰ It was bequeathed to Corpus Christi College Cambridge in 1575 by Matthew Parker, having been acquired by him from Nicholas Wotton, the first Dean of Canterbury after the Dissolution. A Parkerian shelf-mark was written on the recto of the first folio ('S:11'), and red crayon was used to underline passages of text (ff. 1r, 14rv, 15v, etc.) and to paginate ff. 1-17 (which he numbered as pp. 1-35). There are annotations in Parker's hand (for instance the marginal note on f. 32v), and possibly in that of John Joscelyn (on f. 30r). Rather strangely, there is no evidence to suggest that Nowell or Lambarde used this manuscript (*pace* Ker);³¹ the text of *Alfred-Ine* in the *Archaionomia* appears to have been based on one of Nowell's transcripts of Ot. However, the heading 'Leges

²⁹ Parkes, 'The palaeography of the Parker manuscript', p. 171.

³⁰ Bately, ed., *The Anglo-Saxon Chronicle*, pp. xiv-xv.

³¹ Ker, *Catalogue*, p. li.

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Aluredi' was written on f. 31r (see plate 1 above, p. 26) in a sixteenth-century hand, which could possibly be Nowell's. It is probably no more than coincidence that the identical inscription is written in one of Nowell's transcripts at the same point in the text (cf. plate 11, p. 100).

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- (2) LONDON, BRITISH LIBRARY, MS COTTON OTHO B.xi,
ff. 49, 50, 52, 53, fragmentary; *Alf.* rubrics I-
LIII, *Alf.* 40-43, *Ine* 66-76.2: Ot (Ker no. 180)
-

CONTENTS

This manuscript was badly burned in the Ashburnham House fire which destroyed one-tenth of the Cottonian library on 23 October 1731. It once contained:

- * the *Old English Bede*
(now ff. 1-38 + BL, MS Otho B.x, ff. 55, 58, 62);
- * a West Saxon regnal list
(now BL, MS Additional 34652, f. 2);
- * the G-version of the *Anglo-Saxon Chronicle*
(now ff. 39-47);
- * papal and episcopal lists (now lost);
- * the law-codes known as *II As.*, *V As.*, *Iudex* and *Alfred-Ine* (now ff. 48-53);
- * a tract on the penalties for adultery (now lost);
- * the Burghal Hidage, together with additional notes on hidage and defence (now lost);
- * the poem *Seasons for Fasting* (now lost); and
- * a collection of herb recipes (now lost).



PLATE 2

BRITISH LIBRARY, MS
COTTON OTHO B.xi, f. 49v

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The manuscript in its complete state was catalogued by Humphrey Wanley.³² Elsewhere, Wanley indicated that it contained 231 leaves, although this figure does not include a single leaf which was detached from the manuscript in the seventeenth century (probably by William L'Isle), and which consequently escaped the fire of 1731.³³ The undamaged leaf is now contained in BL, MS Additional 34652.³⁴ The script of this leaf is the same as ff. 35-6, 39-47, 49-50 and 52-3 of Cotton Otho B.xi.³⁵

The charred fragments, which are all that survive of this manuscript, have been bound together (frequently out of order). There are also three fragments from this manuscript bound in with Cotton Otho B.x (ff. 55, 58 and 62), and a single tiny fragment amongst the collection of unbound Cotton fragments which reads 'pu eac swilce w[...]/pam welan ea[...]'.

³² Wanley, *Catalogus Historico-Criticus*, p. 219.

³³ In Wanley's copy of Smith's *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae* (now Oxford, Bodleian Library, MS Gough London 54) he wrote the annotation 'constans foliis 231' (p. 71). Ker found it difficult to reconcile this figure with the fact that Wanley's catalogue states that the last item in Ot began on f. 351, but Roland Torkar has argued compellingly that the pagination of Ot 'misplaced' one hundred pages, and thus the page-numbers given by Wanley as '251-351' should have read '351-451'. If this is correct, it is quite conceivable that Ot contained 462 pages or 231 folios. For details, see Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, pp. 52-60 and pp. 138-45.

³⁴ The text of this leaf, part of the West Saxon regnal list, was printed by Napier, in 'Two Old English Fragments'.

³⁵ See Ker, 'Membra Disiecta, Second Series', pp. 81-82.

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DESCRIPTION

The undamaged leaf from Otho B.xi gives one some idea about the original dimensions of this manuscript. It measures 244mm x 177mm; the written space covers 207mm x 144mm. It has twenty-six lines on the recto and twenty-one on the verso. When complete, it was written in three hands.³⁶ The fragments from *Alfred-Ine* vary in size considerably, the largest being approximately 165mm x 100mm, the smallest 85mm x 75mm. There were apparently twenty-seven lines per page. Sections of these fragments are almost impossible to decipher, even using a video-spectral comparator.³⁷ The total extant text of the Alfred code is as follows:

f. 49v:	rubrics I-XXVI	
f. 49r:	rubrics XXVII-LIII	
f. 50v:	<i>Alf.</i> 40-42.3	
f. 50r:	<i>Alf.</i> 42.4-43	
f. 52v:	<i>Ine</i> 66-70.1	
f. 52r:	<i>Ine</i> 73-74.2	originally
f. 53r:	<i>Ine</i> 75-76.2	one leaf
f. 53v:	<i>Ine</i> 70.1-72	

In his catalogue, Wanley described the text of *Alfred-Ine* thus: 'XI. Pag. 311. Leges Ælfredi & Inæ Regum Saxonice'.³⁸ The following article (XII.) began on p.

³⁶ Ker, *Catalogue*, no. 180, p. 233. Hand 1 wrote ff. 1-34, 37-38 and Otho B.x, ff. 55, 58, 62. Hand 2 wrote ff. 35-36, 39-47, 49, 50, 52-53 and the undamaged leaf (BL, MS Additional 34652, f. 2). Hand 3 wrote ff. 48 and 51.

³⁷ See especially *Ine* 70.1-73. Occasionally Felix Liebermann prints more text than is now visible; I have indicated this fact in my critical apparatus (volume two, pp. 200, 202).

³⁸ Wanley, *Catalogus Historico-Criticus*, p. 219.

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349, and from this one can deduce that the law-code was originally written on nineteen leaves. Of these nineteen, only three have survived (see above). The text of *Alfred-Ine* was written by scribe two.

PROVENANCE AND DATE

According to Neil Ker the book was written at Winchester, partly in the middle of the tenth century and partly in the first half of the eleventh century.³⁹ The script is localized on the basis of Ker's conviction that the scribe of the *Old English Bede* also wrote the annals from '925' to 955 in the Parker Chronicle manuscript (E: my no. 1).⁴⁰ It belonged in the thirteenth century to the priory of Southwick in Hampshire.⁴¹ It presumably came into the possession of Sir William Cecil (later Lord Burghley) following the dissolution of the monasteries, since it was at Cecil's house that Nowell transcribed it in 1562.

³⁹ I am indebted to Patrick Wormald for pointing out that the corrections to the lists of bishops were made late in Æthelred's reign, and that the original text must have been written in 1001x1012.

⁴⁰ Ker, *Catalogue*, no. 180, p. 233.

⁴¹ According to annotations made by Wanley in his copy of Smith's *Catalogus* (Bodleian Library, MS Gough London 54), there was a Southwick *ex libris* on pp. 18-19 of the unburned manuscript (see Ker, *Catalogue*, no. 180, p. 234). Ker also noted that 'part of a Southwick inscription...remains at the foot of f. 28'; and that 'a Bede in Old English, evidently this manuscript, was seen by the historian Thomas Rudborne (fl. 1460) at Southwick'.

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By 1621 Sir Robert Cotton had acquired it, since, in the *Catalogus Librorum Manuscriptorum in Bibliotheca Roberti Cottoni* (now BL, MS Harley 6018) he enters the information that he loaned it to 'Mr Lill' (William L'Isle).⁴²

⁴² See MS Harley 6018, f. 148v (the list of loans is dated 23 April 1621).

- (3) LONDON, BRITISH LIBRARY, MS COTTON NERO A.i,
ff. 45v-48r, 51r-57v, incomplete; rubrics to
Bib. Int. 49.5: G (Ker no. 164)
-

CONTENTS

This manuscript, which is made up of two component parts, contains a collection of laws, homilies and ecclesiastical institutes.⁴³ Professor Loyn has described it as 'a kind of theological commonplace book, especially intended for a bishop's use in advising a king', and such a description accords well with what we know about the life and activities of Archbishop Wulfstan, who composed many of the texts contained in both parts of the manuscript.⁴⁴

⁴³ BL, Cotton Nero A.i is available in facsimile, together with a detailed introduction: Loyn, ed., *A Wulfstan Manuscript* (Copenhagen, 1971).

⁴⁴ The influence of Archbishop Wulfstan on the composition of law and formulation of legal policy in late Anglo-Saxon England has been much discussed. Wulfstan was Bishop of London (996-1002), Bishop of Worcester (1002-1016) and Archbishop of York (1002-1023). For details of his life and achievements, see the introduction to Whitelock, ed., *Sermo Lupi ad Anglos*, pp. 1-45, and Bethurum, ed., *The Homilies of Wulfstan*. A more general synopsis is given by Bethurum, 'Wulfstan', pp. 210-46.

3. þan þiſan buðan to healdanne
 donne þe hy m buðon. 7 eoƿ eoƿ ƿið
 ge dƿealdon mid þā monige fealdū
 ge bodū. 7 eoƿ þa ſapla mafoƿ he ƿið
 don donne he ſuhton. 2
 Ða ge ſāmnodan þe uſ ſymb þ 7 uſ
 ða tallu. n gelicode ðæt þe ſendān.
 pauluſ. 7 þa ƿið ðan ðamen ƿillad
 hy þa ſaula ſellan foƿið þu he neſ
 naman. mid hy m þe ſendad iudam.
 7 ſilam. 7 eoƿ þiſe 7 eoƿ
 þā in halgum gaſte 7 eoƿ
 þu ðæt þe name byſþene on eoƿ
 7 eoƿ noldān of 7 eoƿ ðeoƿ meo
 7 eoƿ iſ to healdenne þiſ donne
 ðæt ge foƿið þe ðæt ge eoƿ oð gylt
 7 eoƿ ðiðan ne þeoð ne ðiðan ne iſ mo
 7 eoƿ 7 eoƿ ðiðan ge 7 eoƿ 7 eoƿ ðiðan
 7 eoƿ ðiðan 7 eoƿ ðiðan 7 eoƿ ðiðan
 7 eoƿ ðiðan 7 eoƿ ðiðan 7 eoƿ ðiðan

PLATE 3

BRITISH LIBRARY, MS
COTTON NERO A.i, f. 57v

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DATE AND DESCRIPTION

The two parts of this manuscript were certainly joined by 1580,⁴⁵ and they may have been associated from as early as the eleventh century. It is possible, however, that they were not joined together until the sixteenth century, when Joscelyn filled the lacuna in *Alfred-Ine* with his transcript (ff. 58-69).⁴⁶ The first part (called 'A' by Loyn) is ff. 3-57; the second (which he called 'B') is ff. 70-177. Both parts can be dated on palaeographical grounds to the eleventh century, although it appears that 'part A' postdates 'part B' by up to half a century.⁴⁷ Fourteen parchment leaves (ff. 58-69 +2 unfoliated) were added in the sixteenth century by John Joscelyn; the text which they contain was copied from CCCC MS 173 (E).⁴⁸ Thus, the complete codex contains a total of 186 leaves. Since it has been described in its entirety by Professor Loyn, this description is concerned only with his 'part A', and most particularly with the late eleventh-century text of *Alfred-Ine* (ff. 45v-48r and 51r-57v).

⁴⁵ Ker, *Catalogue*, nos 164-65, p. 215.

⁴⁶ See Loyn, ed., *A Wulfstan Manuscript*, pp. 32-33.

⁴⁷ Ker, *Catalogue*, nos 164-65, pp. 210-15, and Loyn, ed., *A Wulfstan Manuscript*, p. 13 and pp. 18-32.

⁴⁸ This is clear from the lacuna at *Alf.* 1.2. It is possible that Joscelyn collated this transcript with another manuscript, since there are several interlineations which do not resemble the text in E (for example, rubric VII 'circan'; and rubric VIII 'ge'feohte).

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The surviving text of Alfred's law-code is written on ten leaves, which form part of the sixth quire and the whole of the seventh quire of this codex. Each quire contains eight leaves (q. VI: ff. 42-49 and q. VII: ff. 50-57), which measure approximately 165mm x 105 mm. The dimensions of the written space are approximately 135mm x 80 mm. Both quires have like membranes facing like (HFFH). There are nineteen lines per page, with double vertical bounding lines approximately seven millimetres apart. Two different scribes wrote ff. 3-41 and ff. 42-57. The text of the rubrics is laid out symmetrically, with the initials beginning each rubric running down the left margin. These initials, together with the rubric numbers, were written in red pigment, which has turned black through oxidization. The following rubric numbers have been trimmed off during re-binding: XVIII-XXXV, LV-LXXIII and XCII-CX. The rubrics are separated from the Biblical Introduction by two short tracts, *Romscot* and *Judex* (which occur on ff. 48r-50v). The first of these is unique, while the second also occurs on ff. 266r-67v of Nowell's transcript of Ot (Nw1: my no. 7). Latin translations of the rubrics (taken from a manuscript of *Quadripartitus*) were interlineated as glosses by John Joscelyn. Joscelyn also collated the text of *Alfred-Ine* in this manuscript with that in either Ot or (more probably) Nw1. Similarly, Nowell used G,

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collating it with his transcript of Ot, and noting several of the more prominent discrepancies between the two codices in the margin. Perhaps more importantly, Nowell marked the end of the G-version of *Alfred-Ine* in his transcript, using a pointing hand (f. 241r: see plate 4 overleaf). From this one can deduce that when Nowell saw the manuscript (in 1562x67) it was incomplete, an inference which is further recommended by the existence of Joscelyn's transcript of the missing parts of the code (ff. 58-69). The layout of the last two lines of f. 57v is similar to that employed at the same point in Nw1; it may be purely coincidental, but the words 'oðrum monnum' are written separately on the last line of each folio (see G: f. 57v and Nw1: f. 241r; plates 3 and 4). That this manuscript was incomplete when Nowell saw it also has important ramifications for the other marginal collations in Nw1, because these must have come from another source.⁴⁹

⁴⁹ This answers one of the questions raised by Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, p. 134: 'Es bedürfte einer selbständigen Untersuchung, um entscheiden zu können, ob und inwieweit es sich dabei um Konjekturen bzw. Retroversionen handelt oder ob etwa die Hss. G und/oder B, die heute - doch allem Anschein nach bereits zu Joscelyns Zeit! - durch Blattverluste erhebliche Texteinbußen aufweisen...'. This matter is discussed below in greater detail below: see Chapter Two, pp. 155-65.

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PROVENANCE

As Professor Loyn has observed, 'the biggest single problem concerning the physical make-up of Nero A.i is to establish the date at which its two component manuscripts were first bound together'. He has acknowledged that there is 'every palaeographical justification' for regarding them as originally separate, but he also pointed out that the 'legal contents of A would conform easily to the legal and homiletic substance of B', and that some fourteenth-century *probationes pennae* are common to both parts.⁵⁰ On the other hand, the readily identifiable annotations of Robert Talbot (1505-58) only occur in part B; as, of course, do the annotations in a hand thought by Ker to be that of Archbishop Wulfstan himself.⁵¹ The evidence is, therefore, thoroughly inconclusive.⁵²

Of part B, Ker suggested that it was 'written presumably at one of Wulfstan's two sees, either at York (cf. art. 10) or at Worcester'.⁵³ On the basis of the contents, the former of these two possibilities is

⁵⁰ Loyn, ed., *A Wulfstan Manuscript*, pp. 32-33.

⁵¹ Ker, 'The handwriting of Archbishop Wulfstan', pp. 221-24.

⁵² I am indebted to Patrick Wormald for his observation that the text of *III Edg.* in part B shows signs of Wulfstan's influence which are missing from the part A equivalent, and that the latter text is closer to *Quadripartitus*.

⁵³ Ker, *Catalogue*, no. 165, p. 215.

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perhaps the more likely, since the version of *VIII Atr.* on ff. 95v-96v contains laws on sanctuary referring specifically to churches in Northumbria, including (most probably) the cathedral church of Saint Peter in York, Wulfstan's archiepiscopal see. This argument is not, however, conclusive; there is no evidence to tie part A to either of Wulfstan's two sees.⁵⁴

The later history of the manuscript is more certain. It was owned by John Joscelyn in 1580, when William Lambarde transcribed *V Atr.*⁵⁵ By 27 May 1613 it had been acquired by Robert Cotton; below Lambarde's statement of provenance in Cotton Julius C.ii, Francis Tate added a dated annotation indicating that it 'remanet apud Rob. Cotton militem & baronettam'. On f. 3r it bears Cotton's signature ('Ro: Cotton Bruceus').

⁵⁴ I have argued elsewhere that the version of *VIII Atr.* contained in this manuscript, and the 'tract' which follows it (called by Liebermann *Norðhymbra Cyricgrið*), are part of the same text, a variant version of *VIII Atr.* intended especially for Wulfstan's own province of York. For details, see the appendix, pp. 334-39.

⁵⁵ Lambarde wrote in BL, MS Cotton Julius C.ii, f. 52r: 'Ex libro admodum antiquo, quem habet dominus Joannes Jocelinus 1580. Novemb.'.

-
- (4) LONDON, BRITISH LIBRARY, MS BURNEY 277, f. 42,
incomplete; *Ine* pro-23: Bu (Ker no. 136)
-

CONTENTS

This volume, a collection of (mainly medieval) fragments, was owned formerly by the Reverend Charles Burney, and was acquired by the British Museum in 1818. The leaf in question (f. 42) is all that remains of an otherwise lost version of *Alfred-Ine*; it is a single central bifolium, now flattened as a single leaf, containing four complete pages (two folios) of written text from the *Ine* appendix (*Ine* pro-23). In order to make it possible to refer to these individually, and in their original format, I have adopted the following system of reference (set out diagrammatically on p. 54: figure 2).

DATE

The Old English script, a crude Insular minuscule, is probably post-Conquest.⁵⁶ This general impression is reinforced by the 'knobbed' elements of the initials, which became common after the Conquest (see, for example, the 'G' on f. 42^ar, and the 'Æ' on f. 42^bv: plates 5 and 6 overleaf).

⁵⁶ It is dated by Ker (*Catalogue*, no. 136, p. 171) to the second half of the eleventh century.

[illegible]

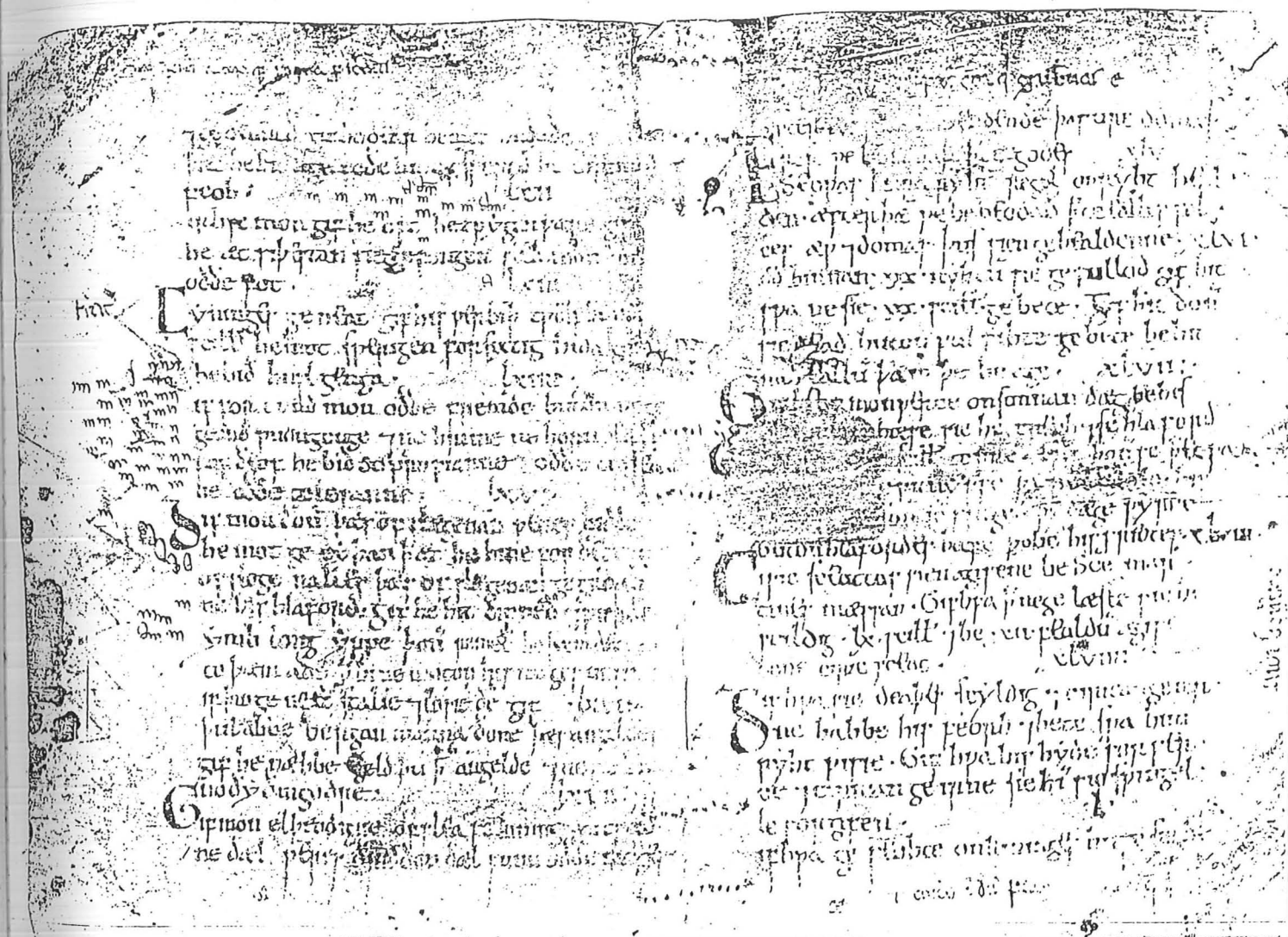
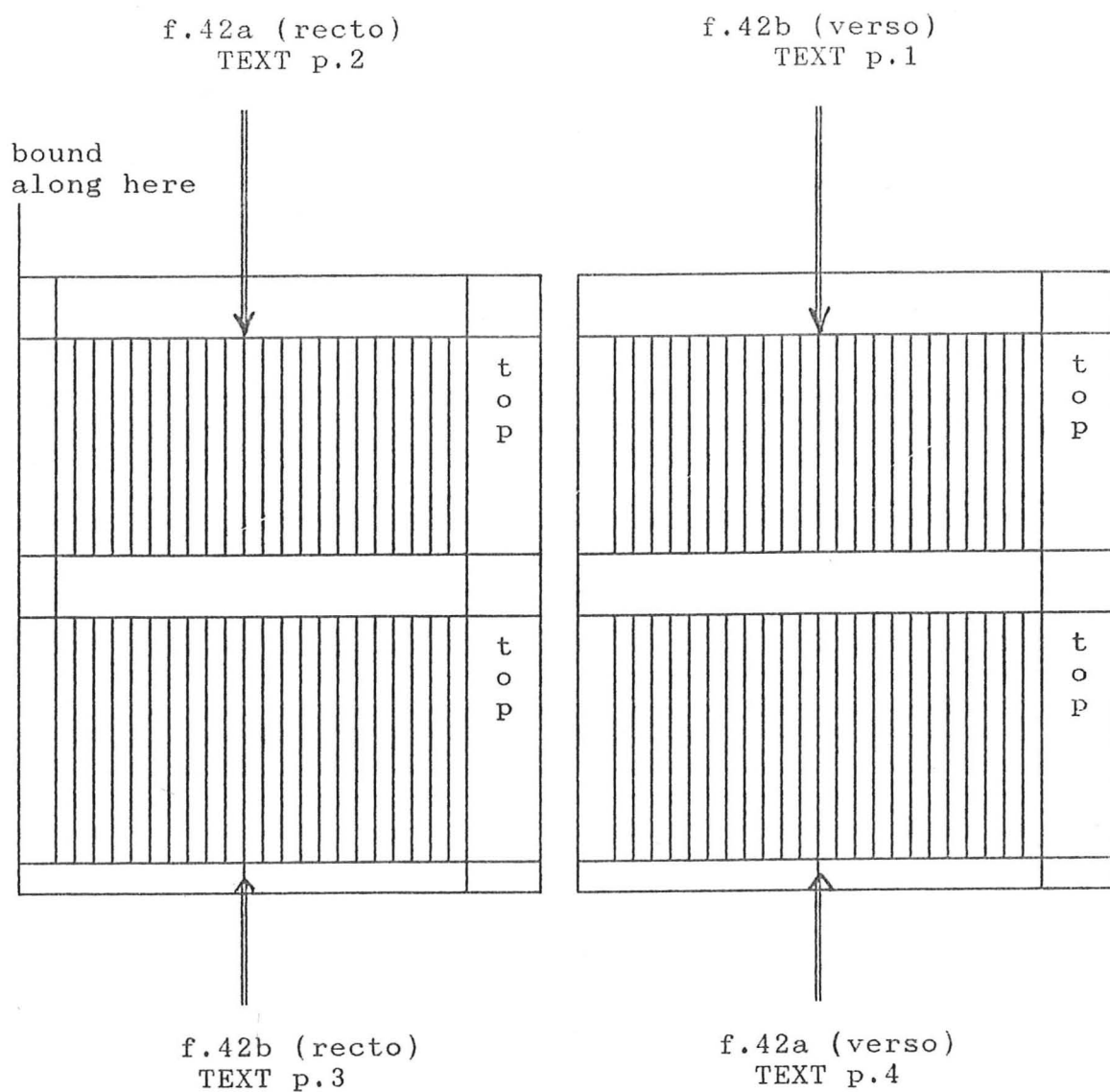


PLATE 6

BRITISH LIBRARY, MS BURNEY 277, f. 42v

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FIGURE 2
BL, MS BURNEY 277, f. 42



ORDER AS BOUND IN MANUSCRIPT:

Text p. 2 (f. 42^ar): scyldig [.]alles...þeofðe gewytte

Text p. 3 (f. 42^br): deest...forstolen flasc findeð

Text p. 1 (f. 42^bv): æfter þ[...] ware...huse sie he

Text p. 4 (f. 42^av): ⁊ gedemeð gif...sunu oððe mages

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DESCRIPTION

This leaf, which measures approximately 275mm x 200mm, is written on parchment. The written space is 152mm x 102mm. There are 25 lines of text per page. It is badly worn in places, and appears to have been removed from the original manuscript by the thirteenth century, since it is heavily annotated with *probationes penna* of that period on both sides of the folio. That these appear on both the recto and the verso of the leaf suggests that it was not actually in use as a pastedown, but rather as a flyleaf. There are, however, traces of paste, and it may subsequently have served as an outer cover (or 'wrapper'), since f. 42r carries an 'S', and perhaps also a 'K', in the centre margin at right angles to the text (corresponding to the spine).⁵⁷ These letters could be a medieval library shelf-mark. As already stated, the leaf is written crudely in a round Insular minuscule. The descenders are often elongated, especially on the last line of each folio. Initials are enlarged, and are sometimes written in red ink or shaded red. One of the rubric numbers (·XLVIII·) is also shaded red.

⁵⁷ In his *Catalogue*, Ker wrote that the leaf was 'used as a wrapper, probably in or before s. xiii, to judge from scribbles' (no, 136, p. 172).

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THE PROBATIONES PENNAE

This leaf has been annotated with a series of *probationes pennae* in several different hands. These might be summarized as follows.⁵⁸

HAND 1: A SMALL ANGLO-CAROLINE MINUSCULE, NEAR-CONTEMPORARY WITH THE TEXT

f. 42^av (bottom margin): c dā

HAND 2: THIRTEENTH-CENTURY GOTHIC TEXTUALIS

f. 42^ar (top margin): ...ire patrem d[***] signa
dedit grad...

f. 42^av (left margin): frater - repeated faintly above

f. 42^av (top margin): ...quia regna pro foc...

f. 42^bv (bottom margin): ...credo in deum patre patre d...

f. 42^bv (right margin): audi benedictione

f. 42^bv (top margin): pater eterna qui gubernas e
(repeated faintly above)

HAND 3: A THIRTEENTH-CENTURY CURSIVE ANGLICANA

f. 42^br (right margin): a... d...

uobis (or nobis) in per/per fide.../auctoritate...

HAND 4: A FOURTEENTH-CENTURY CURSIVE ANGLICANA

f. 42^av: pen tests (constituent letters of *amen* repeated)

⁵⁸ I am indebted to Mrs Michelle Brown of the British Library for her comments about this fragment. My own observations have utilized the information which she generously provided.

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- (5) CAMBRIDGE, CORPUS CHRISTI COLLEGE, MS 383,
pp. 13-42, incomplete *Alf. 3-Ine* 76.3: B
(Ker no. 65)
-

CONTENTS

This manuscript contains a collection of Anglo-Saxon laws and administrative documents, including the only copies of the texts known as *Forfang*, *I Edg.*, *Alfred-Guthrum*, *II Atr.*, *Dunsæte*, *Rectitudines* and *Gerefa*.⁵⁹ It is related to the *Textus Roffensis*, preserving many of the same law-codes as that manuscript (see Table 4 below, p. 69). The similarity of readings in these shared texts led Liebermann to the conclusion that they emanated from a common (and now lost) source.⁶⁰ That this manuscript contains two variant versions of *Alfred-Guthrum* may suggest that it was compiled from more than one exemplar.

DATE

On the basis of the script, this manuscript can be dated to around the end of the eleventh century. The text of *Scipmen* and a regnal list were added on the last page of the manuscript (p. 107) in an early twelfth-century hand.

⁵⁹ It has been described by Ker (*Catalogue*, no. 65, pp. 110-13), and by James, *A Descriptive Catalogue*, II, pp. 230-31.

⁶⁰ Liebermann, ed., *Gesetze*, I, p. xxix. Liebermann's conclusions are examined below: see pp. 145-49.

Opnes biscopes. odde caldon mannes
bojtes byrce. odde mund byrd. se bete
mid. ii. pundum.

mid. ii. pundum.
) yf lra ymb cunigors fæorh sýrpre.
 dupli linc. odde pīccena fcoþmunt.
 odde luf manna. sý he luf fcoþes feýldiz.
 tealles dæp þe he aze. sý he linc sýlne
 tīccofian wylle. do þe cýnnzef þeþ sýl
 de. swa þe eac settad. be eallū hadum. ge
 ceofle. ge eoyle. se de ymb luf līafordes
 fcoþh rýnpie. sý he wif done luf fcoþes
 feýldiz. tealles fæf þe he aze. odde be
 hīr līafordes þeþ linc ge tīccofie.

ac þe setið að hƿýlefe
 cýrrecan de biseop 7e hialzode. Disƿið. Gif
 7e fahmon ^{cýrrecan} 7e cýrrecan. að 7e aƿne. þ̅ lme
 seopon nistum. nan man ut netto. sýf
 lut donon hƿa doðonne sý he seýlðis cým -
 7es mundebynde. 7ðæne cýrrecan ƿiðes. ma -
 þe sýf he ðæri mape of 7̅fo. sýf he ƿor
 hunsie libban ma 7. buton he sýf ut
 feolite. Gýf hƿan heopa cýrrecan mape
 ðeapfe hæbben. healde lme mon on oðrū
 luse. 7þ nabbe. ðon ma ðurpa ðonne seo cý -
 ƿice. 7e ƿite ðæne cýrrecan. ealdorþ̅. þ̅ lmin
 mon on fýrste. mette ne sýlle. Gýf he sýf

PLATE 7

CORPUS CHRISTI COLLEGE, CAMBRIDGE,
MS 383, p. 13

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DESCRIPTION

Collation

a⁴ (1950 flyleaves), A¹⁰ 10 canc. [inserted quire of s. xvi], I⁸ 6 canc. [13-26], II⁸ [27-42], III⁶ [1-12], B¹⁰ 8, 9, 10 canc. [inserted quire of s.xvi], IV⁸ [43-58], V⁸ [59-74], VI¹⁰ 3, 7 canc. [75-92], VII¹⁰ 3, 7 canc. [93-108], b³ (s. xvi parchment flyleaves), c² (1950 flyleaves)

CCCC MS 383 is a compact, pocket-sized manuscript, consisting of seventy-seven leaves (xii+21+vii+32+v) measuring approximately 185mm x 112mm. There are twenty-six lines per page; the area of the written space is approximately 138mm x 76mm. The outer edges have been cut during successive rebinding, and are sometimes ragged. Prickings are, nevertheless, visible on the horizontal lines of most leaves. On some pages the prickings curve inwards, and this may suggest that a pricking-wheel was used (for good examples, see pp. 69 and 79 of the manuscript). The leaves were ruled with a dry point on the hair-side of each bifolium, using a sharp instrument (which cut along the right bounding line on p. 5). One leaf is slightly smaller than the others (q. II, f. 3: pp. 17-18); that it was added at the time of writing is apparent from the position of the prickings, which are uncut. The manuscript is written on stiff, thick

THE MANUSCRIPTS

parchment; the hair-side is sometimes darker. All quires are arranged with the like-side of a leaf facing like (HFFH). The manuscript was written in a dark brown ink by one scribe, although at least two other contemporary hands corrected his work (cf. p. 13, lines 5, 13, 16 and p. 14, lines 1, 3, 13 and p. 5, line 16). Initials were added subsequently in red pigment. On pp. 24-26 new chapters were also indicated using a marker (') drawn in red pigment. Microscopic examination reveals that these were also added after the text was written. The manuscript was paginated by Matthew Parker on the recto of each leaf, using his characteristic red crayon. He mistakenly numbered p. 77 as p. 79, and from that point until the end of the manuscript, the pagination is out by +2. It was rebound in July 1950 by J.S. Wilson of Cambridge. This binding is now in poor condition; the manuscript is due to be conserved and rebound in 1991. The text, although written neatly in a small, clear hand, contains a large number of errors. Many were caused by eye-skip, and the scribe often misread individual letters thereby producing nonsense words (*englifcne* for *engliscne*, *yrfer* for *yrfes*, *on dægelaþe* for *on danelæge*, *belim/be* for *belimpe*). Word-division is more haphazard than is usual, even in a vernacular manuscript; this problem is exacerbated by the irregular and inconsistent use of punctuation.

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The present order of texts is not the same as that of the original manuscript. The text at the end of quire III continues at the beginning of quire I, which was originally preceded by two quires. The correct order is:

gap; pp. 13-42; pp. 1-12; *gap*; pp. 43-108

Two additional quires were inserted in the sixteenth century, one at the beginning of the manuscript (quire A), and one between quires III and IV (quire B).⁶¹ The first (q. A) is a copy of *II-III Edg.* from BL, MS Harley 55, and it is written in an imitative Anglo-Saxon script by an (as yet unidentified) antiquary or amanuensis. The second (q. B) supplied part of *I Cnut*, and was also copied from MS Harley 55. These additional quires were ruled in red; the number of lines per page varies. The table below sets out the contents of the manuscript, both in its original form and as it is today.

⁶¹ The first of these added quires (q. A) was certainly bound into the manuscript by 1574x75, since this manuscript is listed in the Parker Register (CCCC MS 575) as entry 17.4 ('Leges Saxonice') and the *dicta probatoria* are given as 'Dis is ceo' (quire A begins 'Dis is seo'). These quires were probably added after the manuscript was paginated, since there is a sixteenth-century table of contents attached to p. iii which uses the Parkerian pagination. The first item on the contents page, which is described as '+ Ædgare A', was added in a different hand from that which wrote the remainder of the table. On the Parker Register and the date of its compilation, see Page, 'The Parker Register and Matthew Parker's Anglo-Saxon Manuscripts'.

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TABLE 3
ORDER OF TEXTS IN CCCC MS 383 (B)

<u>PRESENT ORDER</u>	<u>ORIGINAL ORDER</u>
II-III EDGAR (<i>copy</i>)	ALFRED
BLASERAS	INE
FORFANG	BLASERAS
I EDGAR	FORFANG
I ÆTHELRED	I EDGAR
ALFRED-GUTHRUM	I ÆTHELRED
'EDWARD-GUTHRUM'	ALFRED-GUTHRUM
II ÆTHELSTAN	'EDWARD-GUTHRUM'
[quire lost]	II ÆTHELSTAN
ALFRED (<i>incomplete</i>)	[quire lost]
INE	I CNUT
I CNUT (<i>part=copy</i>)	II CNUT
II CNUT	I EDWARD
I EDWARD	II EDWARD
II EDWARD	I EDMUND
I EDMUND	II EDMUND
II EDMUND	SWERIAN
SWERIAN	ALFRED-GUTHRUM
ALFRED-GUTHRUM	WIF
WIF	WER
WER	CHARM
CHARM	BECWÆÐ
BECWÆÐ	II ÆTHELRED
II ÆTHELRED	DUNSÆTE
DUNSÆTE	RECTITUDINES
RECTITUDINES	GEREFA
GEREFA	SCIPMEN
SCIPMEN	WS REGNAL LIST
WS REGNAL LIST	

The version of *Alfred-Ine* contained in this manuscript (pp. 13-42) is incomplete. It begins in the middle of *Alf. 3*, and probably did not have a separate table of rubrics, since the chapter-headings were added in red pigment above the relevant chapters (after the main text had been written). It is possible that this manuscript was complete in the sixteenth century, for,

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throughout the code, Lambarde wrote 'Leges Ælfredi/Inæ' at the top of facing folios (i.e. with 'Leges' on the verso of a leaf, and 'Ælfredi/Inæ' on the recto of the following leaf). The first page of Alfred's code to have survived has the word 'Ælfredi' in the top margin (see plate 7 above, p. 58), but the word 'Leges' is missing. The only other place where this pattern is interrupted is at p. 22, where a twelfth-century scribe had already written 'Ælfredes Lage'.

PROVENANCE:

This manuscript is thought to have emanated from St Paul's Cathedral, London, on the basis of the penultimate item in the collection (Ker's no. 26), known as *Scipmen* (which was added in a twelfth-century hand). This text lists the number of men required from estates primarily located in Essex, Middlesex and Surrey, presumably for some kind of naval service. Since several of the estates mentioned belonged at the time of the Domesday survey to either St Paul's or the Bishop of London, this has generally been used as evidence of the provenance of the manuscript.⁶² In the most recent published discussion of the manuscript, Professor Mary Richards asserted:⁶³

⁶² The text of *Scipmen* was edited and translated (with notes) by Robertson, ed., *Anglo-Saxon Charters*, no. 92, pp. 144-45 and 389-92.

⁶³ Richards, 'The Manuscript Contents of the Old English Laws', p. 183.

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The estates named...link the codex to St. Paul's, London, for they were all owned by that foundation. Further, CCCC 383 probably can be associated with the episcopate of Bishop Maurice, the second Norman bishop of St. Paul's (1085-1107), former archdeacon of Le Mans, royal chancellor, and chaplain to William.

Despite the erroneous claim that 'all' the estates named in *Scipmen* were owned by St Paul's, the suggested connection between this manuscript and Bishop Maurice is an attractive one; its compact size is comparable with that of G (my no. 3), which is known to have been used by Archbishop Wulfstan of York. There is, however, no explicit textual evidence to connect this manuscript with Bishop Maurice or anyone else in particular.

Several marginal annotations indicate that the manuscript was used in the thirteenth century. On p. 5 there is a lengthy annotation recorded by James in his catalogue;⁶⁴ and, scratched into the margin of the same folio (with a sharp instrument), there appears to be a stylized drawing of a helm.

FIGURE 3



⁶⁴ James, *A Descriptive Catalogue*, II, p. 230.

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On p. 29 the following words appear in a thirteenth-century hand: 'Matildis bey soror magistri Roberti bey de Abbend[...]' . According to A.B. Emden, the designation *magister* 'was used to dignify all members of the University [of Oxford] who had incepted as Masters of Arts or as Doctors in one of the higher faculties'.⁶⁵ Although the title was not reserved to them exclusively, it is possible that this Robert was none other than *magister* Robert of Abingdon, fl. 1220 (whose name was alternatively spelled 'Abbendon').⁶⁶ There are other marginal annotations from this period on pp. 28, 48-52, 64 and 70.

The manuscript appears to have been used in the sixteenth century by several of the prominent antiquaries. It was acquired by Matthew Parker, who bequeathed it to his College. It is entry 17.4 in the Corpus copy of Parker's register (CCCC MS 575), and not, as James mistakenly asserted, entry 19.2.⁶⁷ Ker asserted that 'Talbot, Nowell, Lambarde and Joscelyn' all used the manuscript, but he does not provide any evidence to

⁶⁵ Emden, *A Biographical Register of the University of Oxford*, I, p. xv.

⁶⁶ *Ibid.*, I, pp. 8-9.

⁶⁷ James, *A Descriptive Catalogue*, II, p. 230. James was perhaps misled by the occurrence of this number on p. iv of the manuscript, next to the current shelf-mark. Entry 19.2, which is described as 'Leges Saxonice 4. 1568' must have been Lambarde's *Archaionomia*, which was published in quarto format that year.

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support this conclusion. As it happens, annotations in Talbot's hand are visible on pp. 6, 28, 73, 79, 83 and 107. Lambarde was responsible for the notes identifying several of the law-codes ('Leges Ælfredi' on pp. 13-25; 'Leges Inæ' on pp. 26-41; 'Leges Cnuti' on pp. 44-71; and 'Leges Edmundi' on p. 84). There is an annotation in Joscelyn's hand on p. 78. There are, however, no obvious traces of Nowell's hand; one might have supposed that he was responsible for the inserted quires written in an imitative Anglo-Saxon script, but this seems unlikely, as the hand does not resemble that used to write Nowell's other transcripts of this code (Nw1-4).

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- (6) MAIDSTONE, KENT COUNTY ARCHIVES OFFICE, MS DRc/R1
(formerly Rochester Cathedral Library, MS A.3.5,
the *Textus Roffensis*), ff. 9r-31v; complete: H (Ker
no. 373)
-

CONTENTS

The *Textus Roffensis* is one of the most important extant manuscripts of Anglo-Saxon law. It contains the single largest collection of pre-Conquest law-codes, including the only copies of the early Kentish laws of Æthelberht (560-616), Hloðhere (673-85) and Eadric (685-c. 86), and Wihtréd (690-725), as well as the sole surviving versions of the tracts known as *VI As.*, *III Atr.*, *Ordal*, *Pax* and *Walreaf*.⁶⁸ Textually, it is closely related to CCCC MS 383 (B: my no. 5), and to the twelfth-century Latin translation of the laws, *Quadripartitus*. As the table below reveals, there are also similarities in the arrangement of the law-codes in their respective manuscript contexts.

⁶⁸ A full list of the contents of the manuscript may be found in Ker's *Catalogue* (no. 373, pp. 443-47). The manuscript has been edited in facsimile by Sawyer, ed., *Textus Roffensis*. It is also described by Felix Liebermann in 'Notes on the *Textus Roffensis*'.

healdenne and tiddan se acenneda goda ^{beoðu} ~~god~~
 ðæt mæsseleuco crist on ^{beoðu} ~~god~~ becom he
 cƿeð þa he ne come na þaƿ ^{beoðu} ~~god~~ to breccanne.
 ne to forþeodanne. ac mid eallum godum to ge
 eceenne an mildheortnesse and eadmodnesse
 he tæceð. þa æfter hiȝ ðiopunze ær þa ðe
 hiȝ apostolas to fapene ƿæron. ƿeond ealle
 eorþan to læpanne. and þa ƿit þa hy æt ƿe
 ðe ƿæron. manega hæðna ðeoda hy ge cƿiden
 to ƿode þa hy ealle æt somme ƿæron. Hy sendon
 ær end ƿæcan to antiochna. and to sýria cristes æ
 to læpanne. Ða hy on ƿeaton ðæt him ne spe
 op. Ða sendon hy færend ƿeƿitte ðe þa aposto
 las sendan ealle to antiochna. and to sýria. and
 to cilita. Ða sind nu of hæðnum ðeodum to crist
 ge cƿinne ðe þa apostolas. an þa ylðian bƿoþra halo
 eop ƿylcað. 7 ƿe eop cƿiðað. þæt ƿe ge axodon ðæt
 ƿe ge fepan sume mid unum ƿopdum to eop
 coman. and eop he fepan ƿisam bucan to heal
 donne ðonne ƿe him budon. and eop sƿiðe ge
 ðe ldon mid ðam manig fealdum gebodum.
 and eop þa sƿa ma for ƿi ƿdon. ðonne heo ge
 ƿihton. Ða ge samnoden ƿe us ymb ðæt.
 and us eallum ða ge licode. þæt ƿe sendon ƿariluf

pend ƿe ƿitte to him.
 ær ðonne þæt

PLATE 8

MAIDSTONE, KENT COUNTY ARCHIVES OFFICE, MS DRc/R1
 (THE TEXTUS ROFFENSIS), f. 14v

THE MANUSCRIPTS

TABLE 4. COMPARISON OF TEXTS IN B, H, and Q

<u>QUADRIPARTITUS</u> 1114x1118	<u>TEXTUS ROFFENSIS</u> original order 1122x1123	<u>CCCC MS 383</u> original order c. 1125
CNUT	INSTITUTA CNUTI	<u>ALFRED</u>] part
<u>ALFRED</u>	WILLIAM ARTICLES	<u>INE</u>] part
<u>INE</u>	ACCUSATORES	<u>BLASERAS</u>
ALFRED INTRO	ÆTHELBERHT	<u>FORFANG</u>
I ÆTHELSTAN	HLOÐHERE/EADRIC	I EDGAR
<u>II ÆTHELSTAN</u>	WIHTRED	<u>I ÆTHELRED</u>
EPISCOPUS	HADBOT	ALFRED/GUTHRUM
NORÐLEODE	WS REGNAL LIST	<u>EDWARD/GUTHRUM</u>
MERCE	ALFRED INTRO	<u>II ÆTHELSTAN</u>
AÐ	<u>ALFRED</u>	I CNUT
HADBOT	<u>INE</u>	II CNUT
<u>BLASERAS</u>	<u>BLASERAS</u>	<u>I EDWARD</u>
<u>FORFANG</u>	<u>FORFANG</u>	<u>II EDWARD</u>
I EDGAR	ORDAL	<u>I EDMUND</u>
IV ÆTHELSTAN	WALREAF	<u>II EDMUND</u>
III ÆTHELSTAN	<u>II ÆTHELSTAN</u>	<u>SWERIAN</u>
VI ÆTHELSTAN	V ÆTHELSTAN	ALFRED/GUTHRUM
ORDAL	IV ÆTHELSTAN 6	<u>WIF</u>
ALFRED/GUTHRUM	PAX	<u>WER</u>
PSEUDO AGu	<u>SWERIAN</u>	CHARM: THEFT
<u>EDWARD/GUTHRUM</u>	AÐ	BECWÆÐ
<u>I EDWARD</u>	MIRCNA LAGA	II ÆTHELRED
<u>II EDWARD</u>	VI ÆTHELSTAN	DUNSÆTE
<u>I EDMUND</u>	GEPIŦÐO	RECTITUDINES
<u>II EDMUND</u>	NORÐLEODA LAGA	GEREFA
<u>SWERIAN</u>	<u>WIF</u>	SCIPMEN
<u>WIF</u>	CHARM: THEFT	WS REGNAL LIST
<u>WER</u>	BECWÆÐ	
<u>I ÆTHELRED</u>	<u>EDWARD/GUTHRUM</u>	
III ÆTHELRED	<u>WER</u>	
PAX	<u>I EDWARD</u>	
WALREAF	<u>II EDWARD</u>	
IV ÆTHELRED	<u>I EDMUND</u>	
DUNSÆTE	<u>II EDMUND</u>	
VII ÆTHELRED	<u>I ÆTHELRED</u>	
IUDEX	WILLIAM: LAD	
II EDGAR	III ÆTHELRED	
III EDGAR	IUDICIA DEI 1-3	
III EDMUND	CNUT Ch. (S959)	
WILLIAM: LAD	CORONATION Ch.	
WILLIAM ARTICLES	EXCOMMUNICATION	
GEPIŦÐO	GENEALOGIES	
RECTITUDINES	LISTS etc.	

Texts common to
all three MSS
are underlined
and printed in
bold type

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This manuscript originally consisted of two separate parts, which, as both Sawyer and Richards have pointed out, were bound together from a very early date. The first part (ff. 1-118) contains the aforementioned collection of Anglo-Saxon laws, together with genealogies and lists; the second part (ff. 119-235) is 'basically a chartulary of Rochester Cathedral Priory'.⁶⁹ Both parts were copied by the same scribe. That the two parts were originally separate is apparent from their independent quire signatures; a contemporary catalogue of the Cathedral Priory library, which is contained in the second part of the manuscript (ff. 224r-30r), is also relevant in this context. This catalogue lists a codex (item 62) described as 'Institutiones regum Anglorum in .i. uolumine' (f. 228r), and is almost certainly a reference to part one of the *Textus Roffensis*, which originally began with the *Instituta Cnuti* ('Incipiunt quedam instituta de legibus regum Anglorum'). It is impossible to ascertain precisely when these two parts were bound together.⁷⁰

⁶⁹ Sawyer, ed., *Textus Roffensis*, I, p. 11.

⁷⁰ Sawyer has pointed out that 'most Rochester books have an early fourteenth-century *ex libris* inscription at the foot of the first page, as on fo. 1 of the *Textus Roffensis*, and the absence of such an inscription from f. 119 suggests that by the early fourteenth-century the two parts had already been bound together' (*Ibid.*, I, p. 11). Cf. Richards, who argued that 'the volumes appear to have been planned as a composite book', and who concluded that 'it seems probable that the two parts of the *Textus Roffensis* were combined late in the twelfth century after the cartulary was completed' (Richards, *Texts and Their Traditions*, p. 46).

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DATE

This manuscript can be dated with a fair degree of accuracy, albeit on the basis of circumstantial evidence.⁷¹ The last entry in the list of archbishops of Canterbury, written in the hand of the main scribe, is *Rodulfus* (f. 110v), that is Ralf d'Escures, whose obit is given as *xiii kl' nouebr'* (20 October, 1122), thereby establishing a *terminus ad quem* for the completion of the manuscript. The next name, *Willelmus* (William de Corbeil: d. 21 November, 1136) was added in a later hand. Sawyer has suggested that this may imply 'that the main scribe had finished with the manuscript before 18 February 1123, the date of William's consecration'.⁷² The bishop of Rochester at that time was Ernulf (1115-24), whose name has been associated with the book traditionally, and who is linked with its production in a fourteenth-century annotation on the flyleaf: 'Textus de ecclesia Roffensis per Ernulfum episcopum'. The proposed dating (c. 1122x23) is certainly consonant with the general character of the script.

⁷¹ The arguments have been rehearsed by Sawyer in the facsimile (see *The Textus Roffensis*, I, pp. 18-19).

⁷² There is no particular palaeographical reason why this should be the case. See *Ibid.*, I, p. 18.

THE MANUSCRIPTS

DESCRIPTION

Collation

a² (modern flyleaves), b³ (earlier flyleaves), I⁸ [1-8], II⁸ +2 after 3 [9-18], III⁸ [19-26], IV¹² +1 after 5 [27-39], V⁸ [40-47], VI¹⁰ [48-57], VII⁸ [58-65], VIII⁸ [66-73], IX¹² +2 after 11 [74-86], X⁸ [88-95], XI⁸ wants 6, 7, 8 [96-100], XII⁸ 6 canc., +1 before 7 [101-108], XIII⁸ [109-116], XIV² [117-118]

The following quire signatures are visible: ·IX· = 47v; ·I· = 65v; ·II· = 73v; ·III· = 87v; ·VIII· = 95v.⁷³

It is apparent from the above list that the present order of quires differs from the manuscript in its original form. The original order, as established by Peter Sawyer, was as follows.⁷⁴

qq. VII-IX (ff. 58-87), qq. I-IV (ff. 1-39),
q. X (ff. 88-95), qq. V-VI (ff. 40-57),
qq. XI-XIV (ff. 96-118).

A table setting out the contents of the manuscript, in both its original and its present form, is given below.

⁷³ With the exception of the first signature (·IX·), these are barely legible. Signature ·I· is nothing more than the faintest speck of ink (once the 'club' of the numeral). Only the clubbing of ·II·, ·III· and ·VIII· can be discerned.

⁷⁴ Sawyer, ed. *Textus Roffensis*, I, p. 12.

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TABLE 5. ORDER OF TEXTS IN THE *TEXTUS ROFFENSIS*

ORIGINAL ORDER	PRESENT ORDER
Instituta Cnuti	Æthelberht
William: 10 articles	Hloðhere & Eadric
Accusatores	Wihtred
Æthelberht	Hadbot
Hloðhere & Eadric	WS regnal list
Wihtred	Alfred intro
Hadbot	Alfred
WS regnal list	Ine
Alfred intro	Blaseras
Alfred	Forfang
Ine	Ordal
Blaseras	Walreaf
Forfang	II Æthelstan
Ordal	V Æthelstan
Walreaf	IV Æthelstan 6
II Æthelstan	Pax
V Æthelstan	Swerian
IV Æthelstan 6	Að
Pax	Mircna laga
Swerian	Edward/Guthrum
Að	Wer
Mircna laga	I Edward
VI Æthelstan	II Edward
Gepingðo	I Edmund
Norðleoda laga	II Edmund
Wif	I Æthelred
Charm against theft	William: lad
Becwæð	III Æthelred
Edward/Guthrum	Iudicia Dei 1-3
Wer	Cnut charter (S959)
I Edward	Instituta Cnuti
II Edward	William: 10 articles
I Edmund	Accusatores
II Edmund	VI Æthelstan
I Æthelred	Gepingðo
William: lad	Norðleoda laga
III Æthelred	Wif
Iudicia Dei 1-3	Charm against theft
Cnut Charter (S959)	Becwæð
Henry I coronation ch.	Henry I coronation ch.
Excommunication	Excommunication
genealogies	genealogies
Lists/miscellaneous	Lists/miscellaneous

THE MANUSCRIPTS

TABLE 5. ORDER OF TEXTS IN THE *TEXTUS ROFFENSIS*

ORIGINAL ORDER	PRESENT ORDER
Instituta Cnuti	Æthelberht
William: 10 articles	Hloðhere & Eadric
Accusatores	Wihtred
Æthelberht	Hadbot
Hloðhere & Eadric	WS regnal list
Wihtred	Alfred intro
Hadbot	Alfred
WS regnal list	Ine
Alfred intro	Blaseras
Alfred	Forfang
Ine	Ordal
Blaseras	Walreaf
Forfang	II Æthelstan
Ordal	V Æthelstan
Walreaf	IV Æthelstan 6
II Æthelstan	Pax
V Æthelstan	Swerian
IV Æthelstan 6	Að
Pax	Mircna laga
Swerian	Edward/Guthrum
Að	Wer
Mircna laga	I Edward
VI Æthelstan	II Edward
Gepingðo	I Edmund
Norðleoda laga	II Edmund
Wif	I Æthelred
Charm against theft	William: lad
Becwæð	III Æthelred
Edward/Guthrum	Iudicia Dei 1-3
Wer	Cnut charter (S959)
I Edward	Instituta Cnuti
II Edward	William: 10 articles
I Edmund	Accusatores
II Edmund	VI Æthelstan
I Æthelred	Gepingðo
William: lad	Norðleoda laga
III Æthelred	Wif
Iudicia Dei 1-3	Charm against theft
Cnut Charter (S959)	Becwæð
Henry I coronation ch.	Henry I coronation ch.
Excommunication	Excommunication
genealogies	genealogies
Lists/miscellaneous	Lists/miscellaneous

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The manuscript, in its present arrangement, consists of 238 leaves (two parchment flyleaves of the same date as the binding, three leaves at the beginning of the manuscript bearing post-medieval annotations, and 235 parchment leaves of text). Part one of the manuscript, described above, consists of 118 leaves. These leaves, while not particularly thick, are of good quality. They vary slightly in size, and one can deduce from the quire signatures, marginal additions and prickings that the leaves have been cut down considerably. They now measure approximately 225mm x 155mm; the area of the written space is approximately 165mm x 95mm. There are twenty-four lines of text per page. The quires were ruled, one at a time, with a hard point; they are arranged with like membranes facing like (HFFH), except for ff. 31-33 (HFHFFH), ff. 84-87 (HFHFFHFH), and ff. 100-2 (HFHFFH), where additional leaves have been added. The manuscript was written by one scribe, who corrected his own work. Having copied the law-code *Alfred-Ine*, preserving many early West Saxon forms, a scribe then made wholesale linguistic alterations, and modernized the language. This feature was recognized by Felix Liebermann, who called the corrected text 'Hcor', and who wrote to the Dean of Rochester that 'your MS is in fact almost a

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palimpsest'.⁷⁵ This is something of an exaggeration, not least because it is only true of ff. 9-31. Nevertheless, Liebermann's observation is accurate; the language was modernized so that almost every 'o' before a nasal was changed to 'a' (see, for example, plate 8, line 5), and 'i' was changed frequently to 'y'. Examination of these folios under microscopic magnification reveals quite clearly that these changes were made after the main text had been written, and so thorough was the correction that the scribe only missed four occurrences of o before a nasal towards the end of the Ine appendix (f. 31r, lines 10 and 13: *mon* in *Ine* 71 and 72; f. 31v, line 6 *mon* in *Ine* 75; and f. 31v, line 10: *buton* in *Ine* 75). Although most of these changes are not visible in the facsimile (let alone in the plate), other erasures are more obvious, because the scribe frequently covered the erased space by joining the letters on either side with a line (see, for example, f. 11r, line 9; f. 14r, lines 7 and 13). The palaeography of the manuscript is described by Ker in his *Catalogue*, and by Peter Sawyer in the facsimile, and I do not propose to repeat here what they have said. The vernacular texts in this manuscript are punctuated using a raised point and, occasionally, a *punctus uersus* (for example, f. 14, line 15). Latin texts

⁷⁵ Cited by Arnold in 'Preliminary Account of "Notes on the Textus Roffensis", by Dr. F. Liebermann', p. 95.

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are punctuated using a raised point, *punctus elevatus*, *punctus uersus* and the mark of interrogation (see f. 51, line 8). Additions are made using a caret, or by extending the tail of a descender below a line at the point of insertion. Large initials are frequently coloured red, green or, less frequently, purple (or a combination of red and green). Small initials are usually written in the same brown ink as the text, and are often shaded red. Many of the texts also have titles written in red; the text of *Alfred-Ine* has red rubric numbers entered above the relevant chapters.

PROVENANCE

This book was written at Rochester Cathedral Priory in the first quarter of the twelfth century, and was housed there until deposited by the Dean and Chapter of Rochester in the Kent Archives Office, County Hall, Maidstone in 1959. The historical importance of the book has been discussed by Mary P. Richards.⁷⁶ Both Richards, and Sawyer before her, have pointed out that the use of the word *textus* to describe this codex is unusual, since it is an appellation usually reserved for gospel books. In the early thirteenth-century inventory of donations to St Andrew's, Rochester, recorded in BL, MS Cotton

⁷⁶ Richards, 'The *Textus Roffensis*', in *Texts and Their Traditions*, pp. 43-60.

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Vespasian A.xxii (f. 88), the word *textus* is used to describe four books given to the library by Bishop Gundulf (1077-1108). All but one has been lost, but the extant gospel book (BL, MS Royal 1.D.iii) carries on its flyleaf an almost identical inscription to that entered in the *Textus Roffensis* (both take the form: 'Textus de ecclesia Roffensi...'). The usual form of inscription in Rochester books is 'de claustro', thereby leading one to the conclusion that these books of especial worth were not deposited in the monastic library, but rather they were stored in the cathedral church. Mary Richards has indicated that this supposition is supported by the omission of both volumes from a 1202 inventory of the library.⁷⁷

The post-Reformation history of the manuscript is somewhat chequered.⁷⁸ It was used by William Lambarde, who initialled a note on f. 1r in 1573 (see Plate 9 overleaf), and who wrote on the flyleaf to Part ~~Two~~ of the manuscript (f. 118v): 'Hæc pars Libri prior, folia habet .118. numero, posterios vero totidem, duobus demptis. WL'.

⁷⁷ Richards, *Texts and Their Traditions*, p. 45.

⁷⁸ For details, see Sawyer, ed., *Textus Roffensis*, I, pp. 20-21, and Liebermann, 'Notes on the Textus Roffensis', pp. 109-11.

Text⁹ de eua Rossu. p. Enul fū epm / reg. la. p.

(12) *Y*
 3. La. lib. u.
 4. Loria. a. u.
 5. har. ipas. d.
 6. Loria. moria.
 7. uige. refert. fu.
 8. Loria. exomplex.
 9. har. ipas. an. d.
 10. uige. refert. fu.
 11. Loria. exomplex.
 12. har. ipas. an. d.
 13. uige. refert. fu.
 14. Loria. exomplex.
 15. har. ipas. an. d.
 16. uige. refert. fu.
 17. Loria. exomplex.
 18. har. ipas. an. d.
 19. uige. refert. fu.
 20. Loria. exomplex.
 21. har. ipas. an. d.
 22. uige. refert. fu.
 23. Loria. exomplex.
 24. har. ipas. an. d.
 25. uige. refert. fu.
 26. Loria. exomplex.
 27. har. ipas. an. d.
 28. uige. refert. fu.
 29. Loria. exomplex.
 30. har. ipas. an. d.
 31. uige. refert. fu.
 32. Loria. exomplex.
 33. har. ipas. an. d.
 34. uige. refert. fu.
 35. Loria. exomplex.
 36. har. ipas. an. d.
 37. uige. refert. fu.
 38. Loria. exomplex.
 39. har. ipas. an. d.
 40. uige. refert. fu.
 41. Loria. exomplex.
 42. har. ipas. an. d.
 43. uige. refert. fu.
 44. Loria. exomplex.
 45. har. ipas. an. d.
 46. uige. refert. fu.
 47. Loria. exomplex.
 48. har. ipas. an. d.
 49. uige. refert. fu.
 50. Loria. exomplex.
 51. har. ipas. an. d.
 52. uige. refert. fu.
 53. Loria. exomplex.
 54. har. ipas. an. d.
 55. uige. refert. fu.
 56. Loria. exomplex.
 57. har. ipas. an. d.
 58. uige. refert. fu.
 59. Loria. exomplex.
 60. har. ipas. an. d.
 61. uige. refert. fu.
 62. Loria. exomplex.
 63. har. ipas. an. d.
 64. uige. refert. fu.
 65. Loria. exomplex.
 66. har. ipas. an. d.
 67. uige. refert. fu.
 68. Loria. exomplex.
 69. har. ipas. an. d.
 70. uige. refert. fu.
 71. Loria. exomplex.
 72. har. ipas. an. d.
 73. uige. refert. fu.
 74. Loria. exomplex.
 75. har. ipas. an. d.
 76. uige. refert. fu.
 77. Loria. exomplex.
 78. har. ipas. an. d.
 79. uige. refert. fu.
 80. Loria. exomplex.
 81. har. ipas. an. d.
 82. uige. refert. fu.
 83. Loria. exomplex.
 84. har. ipas. an. d.
 85. uige. refert. fu.
 86. Loria. exomplex.
 87. har. ipas. an. d.
 88. uige. refert. fu.
 89. Loria. exomplex.
 90. har. ipas. an. d.
 91. uige. refert. fu.
 92. Loria. exomplex.
 93. har. ipas. an. d.
 94. uige. refert. fu.
 95. Loria. exomplex.
 96. har. ipas. an. d.
 97. uige. refert. fu.
 98. Loria. exomplex.
 99. har. ipas. an. d.
 100. uige. refert. fu.

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The first note, together with an annotation in a copy of the *Archaionomia* now in the Bodleian library,⁷⁹ has been used as proof that Lambarde did not know the *Textus Roffensis* when he published the *Archaionomia*.⁸⁰ This seems highly probable, despite Samuel Pegge's assertion that 'the first person that made any use of our MS. since the restoration of learning, was that great reviver of Saxon literature, Lawrence Nowell', who 'made certain transcripts from the Textus' and imparted them to Lambarde who published them.⁸¹ It is, nevertheless, curious that some of the interpolations in Nowell's transcripts (Nw1-Nw4) appear closer to H than to any other extant manuscript.⁸² Moreover, reference is made in an eighteenth-century list of 'Collectanea of Lawrence

⁷⁹ The annotated copy of the *Archaionomia* is Oxford, Bodleian Library, 4^o.L.5.Jur.Seld.. On f. 71, Lambarde wrote: 'Longè aliis uerbis legitur capitulum istud, in Textu Roffensi, ac sensu haud omnino eodem, ut postea uidere est'. I am indebted to Professor Berkhout for informing me that this book was given by Lambarde to his future father-in-law (George Multon) in 1569.

⁸⁰ The most recent discussion of this question is by Torkar, ed., 'Exkurs: Nowell, Lambarde und der *Textus Roffensis*', in *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, pp. 124-28. Torkar has observed that several of the texts unique to the *Textus*, which one might have expected Lambarde to print in the *Archaionomia*, are missing. Furthermore, as Sisam demonstrated, Lambarde's texts of *Mircne*, *Að* and *Norðleod* are translations from Q into Elizabethan Old English. This should hardly have been necessary if Nowell or Lambarde had known the *Textus Roffensis*, since the manuscript contains vernacular copies of these tracts.

⁸¹ Pegge, 'An Historical Account of that Venerable Monument of Antiquity the *Textus Roffensis*', pp. 4-5.

⁸² For further details, see below, pp. 162-65 and 167-69.

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Nowell and William Lambarde' to passages 'ex textu Roffensi' in a 'Rhapsodia; containing various short Excerpta, written by Lambarde in 1568'.⁸³ On the face of it, this could indicate that Lambarde became acquainted with the *Textus* before 1573, but one must also admit the possibility that this 'Rhapsodia' was a commonplace book, begun in 1568 and continued for some years.

In his facsimile, Sawyer asserted that 'the first fairly full transcript that has survived, Brit. Mus. Cotton Julius C.ii. was made in 1589 by Francis Tate'.⁸⁴ There are several grounds for doubting this attribution. The manuscript, Cotton Julius C.ii, has already been mentioned in the description of G (my no. 3), where certain conclusions were drawn about the provenance of that manuscript on the basis of an inscription by William Lambarde, to which was added a further note by Francis Tate. Sawyer's belief that Tate made the transcript of the *Textus Roffensis* in Cotton Julius C.ii is based on

⁸³ See 'Collectanea of Lawrence Nowell and William Lambarde, in the possession of Multon Lambard, Esq;', in *Bibliotheca Topographica Britannica*, edited by Nichols, p. 511. The excerpts contained in the 'Rhapsodia' were given from Lambarde's 'own list'. According to a notebook of William Cock, F.S.A., a collector of Lambarde memorabilia, this memoir was 'written by Dr Randolph, Bishop of London d. 1813, who married a Lambarde'. Some of Cock's papers are now in the Kent Archives Office; others were purchased by the Lambarde family after his death, and now form part of the family archive in the Drapers' Company. Cock's note is verified by the fact that the original manuscript of this memoir, and corrected proofs, remained in the possession of the Lambarde family until bequeathed to the Drapers' Company in 1976.

⁸⁴ Sawyer, ed., *Textus Roffensis*, I, p. 20.

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another dated inscription at the top of f. 42r which reads: 'XX Maii 1589 per Francis Tate...'. This inscription was made in a hand quite different from that which amended Lambarde's annotation on f. 52r, and is probably by Robert Cotton. The hand which wrote the transcript of the *Textus* is remarkably similar to that responsible for the transcripts of *V Atr.* and *VIII Atr.* (ff. 52-56). Comparison of these transcripts with Cotton Vespasian A.v (a Nowell/Lambarde commonplace book) allows one to identify positively the imitative Anglo-Saxon script as that of William Lambarde. This identification is confirmed by the initialled signature of Lambarde on f. 52r, and again on f. 60r, of Cotton Julius C.ii. The latter is dated 1580. Thus, it seems that the first extant transcript of the *Textus* is by the editor of the *Archaionomia*, and not by Francis Tate. Furthermore, one can tentatively identify Cotton Julius C.ii as the manuscript of 'Saxon lawes' given to Sir Robert Cotton by Francis Tate,⁸⁵ in which case the word 'per' in the inscription should be construed as indicating transfer of possession, and not authorship. Other transcripts by William Lambarde bearing the inscription 'ex textu Roffensi' are contained in Cotton Vespasian A.v (ff. 42r-62v); one folio (f. 63v) bears the (deleted) date '1585

⁸⁵ See BL, MS Harley 6018, f. 156: 'Saxon Lawes manuscript that Mr Tat gave me'.

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⁸⁵ See BL, MS Harley 6018, f. 156: 'Saxon Lawes manuscript that Mr Tat gave me'.

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July'. The Cotton Vespasian A.v commonplace book is obviously comparable with the 'Rhapsodia' mentioned in the eighteenth-century list of Lambarde's 'Collectanea'. That it is not identical is clear from a comparison of the contents, and from the fact that Vespasian A.v was in the Cottonian library and not that of Lambarde. It is therefore highly unlikely that either Nowell or Lambarde saw the *Textus Roffensis* before the publication of the *Archaionomia*, not least because it seems inconceivable that Lambarde would have omitted the first English law-code (attested by Bede), nor would he have published the retroversions of *Norðleod*, *Mirce* and *Að* which all appear in this manuscript.⁸⁶

In the seventeenth and eighteenth centuries, the Dean and Chapter of Rochester allowed several antiquaries to borrow the *Textus Roffensis*, and such are the indignities which it suffered that one might wonder at its survival. It was the object of an action in Chancery for recovery, following its appropriation by Dr Thomas Leonard, to whom it was loaned c. 1631.⁸⁷ Once returned it was loaned again, this time to Sir Roger Twysden (who returned it in 1663), and later to Dr John Harris. Harris

⁸⁶ On these translations into Old English, see below, pp. 117-22.

⁸⁷ The manner of its recovery is described briefly in a note on f. iii, dated 1633 (the year of its recovery). For further details about this suit, see Arnold, 'The *Textus Roffensis* in Chancery AD 1633', pp. 225-32.

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had the book for a considerable length of time, much to the chagrin of John Johnson, who complained in the preface to his book on the constitutions of the Church of England, that the 'noble manuscript was not at home in its proper repository during the whole time I was composing this work'.⁸⁸ It was during this period that the *Textus Roffensis* was dropped in the Thames, for when Johnson finally saw the codex, he recorded that it 'is well preserved, save where it is tarnished by the salt-water which it took in its late travels'. This water damage is still clearly visible today.

⁸⁸ Johnson, ed., 'To the Reader', in *A Collection of the Laws and Canons of the Church of England*, I, pp. viii-ix.

- (7) LONDON, BRITISH LIBRARY, MS ADDITIONAL 43703,
ff. 236v-55r, complete: Nw1 and Nw2 (annotations)
-

CONTENTS

This is a transcript of the damaged BL, MS Cotton Otho B.xi (Ot: my no. 2), which was burned in the fire which destroyed part of the Cottonian library in 1731. It was made by Laurence Nowell in the house of William Cecil, and is complete, with the exception that Nowell failed to copy the preliminary matter from the Old English Bede. In his discussion of the transcript, Roland Torkar pointed out that:⁸⁹

Bei Nowells Transkript von Af-Ine sind zwei Textschichten auseinanderzuhalten: der Grundtext (Nowells Kopie aus Ot) und zusätzliches Textmaterial (nachträglich vorgenommene, nicht auf Ot basierende Eintragungen).

He called these two strata of text Nw1 (the main text) and Nw2 (the additional marginal annotations). The relationship between them will be discussed in the following chapter.

⁸⁹ Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, pp. 129-30.

- 1 Be þā þe mon ne fegle oþrū deman buton swa
 he wille si hi mon deme.
 2 Be aþū 7 be peddū. 3. Be circeana focnū.
 4 Be borh brige. 5 & Behlaxond reafre.
 6 Be circeha fribre. 7 Be circeha fcale.
 8. Be þon þe mon on cgmngs healle feohte.
 ix. Be nunnan hamede.
 x. Be bearn eacnū pife of sleghnū.
 xi. Be twelf hyndes monnes pife forlegnū.
 xii. Be circeha fce fæmnan on figne
 xiii. Be fudū befnete. xiiii. Be dū bpa monna dædū.
 xv. Be þā monnū þe beforan biſceopū feohtað.
 xvi. Be nunnan on figne.
 xvii. Be þā monnū þe heora pæpſt to monſlyhte
 xviii. Be þā þe mune cū heora feoh buton leafe befaftað. f
 xix. Be ppeofa gefeohte. xx. Be eorfeðs ande dan
 xxi. Be hundſ flyte. xxii. Be mettra miſdædū
 xxiii. Be ceorlſ mthneſſ ~~med~~ hēmede.
 xxiiii. Be twy hyndū mth æt hloc flyhta
 xxv. Be ryx hyndū mth. xxvii. Be twelf hyndū mth.
 pifmonnes xxviii. Be unſepin twedſ monnſ pif ned hamede.
 xxix. Be ſpa ſepin twedſ monnſ flete.
 xxx. Be ſolc leaſun geſepnham.
 xxxi. Be eorfeðs ande dan. xxxii. Be cyplice monnſ byndellan
 xxxiii. Be ſpeneſ ſemeleayneſſe.
 xxxiiii. Be bold gealle.
 xxxv.

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DATE

Two inscriptions, in Nowell's hand, allow one to date this transcript precisely. On f. 264v, Nowell wrote: 'Hæc scripsit Laurentius Nowellus propria manu in ædibus Cecillianis anno Domini 1562'; and on f. 2r he inscribed the book with the *ex libris* 'Laurence Nowell the owner. 1562'.

DESCRIPTION

The transcript is written on 277 paper leaves, with three modern flyleaves (which presumably date from the most recent conservation of the binding in July 1962). The leaves are paginated using pencil on the recto of each leaf in the top right-hand corner. Blank leaves are unnumbered. The paper is not watermarked, although two sixteenth-century flyleaves bear the watermark of a hand with a star above it.⁹⁰ The leaves measure approximately 202mm x 154mm; the dimensions of the written space vary, averaging approximately 155mm x 100mm. The number of lines per page also varies from twenty-five to thirty. The transcript is bound in a parchment binding contemporary with the manuscript; a title, which is now only partly legible, was written in ink on the spine and dated 1562. The text is written in Nowell's

⁹⁰ Cf. Heawood, *Watermarks, mainly of the 17th and 18th centuries*, plates 324-31.

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characteristic imitative Anglo-Saxon script, and, to judge from the annotations, it was intended as a working copy. The script is perhaps slightly less legible than the other two transcripts of *Alfred-Ine* in Nowell's hand: sometimes it is particularly difficult to distinguish between Nowell's 'a' and his ill-formed 'o' (see the list below for examples), and on several occasions Nowell formed his 'y' by writing an 'i' and then adding the descender.

The text of *Alfred-Ine* was written in a dark brown ink on ff. 236v-55r, and is complete. The only use of colour occurs on f. 237r where the initial 'I' of the word 'Ines' is shaded red. It begins with a table of rubrics, and continues without any interruption through the Biblical Introduction, the Alfred code and the Ine appendix. Rubric numbers were usually written in a space above the chapters which was left for the purpose, although occasionally the numbers were written in the margin. Other rubrics (from a different manuscript) were subsequently added next to some chapters. Chapters usually begin with large initials, and the text is punctuated using only the raised point. It is heavily annotated by Nowell, and was glossed interlineally by Lambarde from a manuscript of *Quadripartitus* (see, for example, f. 239v, lines 5 and 8; f. 242r, lines 12 and 14, etc.). It was also corrected by Nowell, who scored

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out errors. By far the most interesting and important feature of the transcript is a series of annotations, made by Nowell, which appear in the margin. It appears that having copied the Nw1 version of *Alfred-Ine* from Ot, Nowell then collated it with at least two other manuscripts, noting discrepancies in the margin. These annotations, which Torkar regarded as the second stratum of text (Nw2), are distinguishable by the fact that they are written in a lighter brown ink than that used for the main text. Collation of these annotations with the extant manuscripts reveals that ff. 236v-41r were collated with Cotton Nero A.i (G: my no. 3), which was probably incomplete when Nowell used the manuscript (cf. above, pp. 46-47). One cannot account for the marginal annotations after the point at which G ends (f. 241r, line 29) by reference to the extant manuscripts. Many of the variant readings have been incorporated into the texts of Nw3 and Nw4, a circumstance which presumably indicates that these transcripts postdate 1562.

The accuracy of this transcript has been questioned by Raymond Grant, who asserted:⁹¹

Nowell's transcript of Bede is of no use to the student of spellings, phonology or inflections and no dialect indications can be drawn from it.

⁹¹ Grant, 'Laurence Nowell's transcript of BM Cotton Otho B.xi', p. 124.

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His assessment of the manuscript has, in turn, been called into question by Roland Torkar and Angelika Lutz, who have argued that Nowell's copying was far more accurate than Grant supposed.⁹² No previous attempt has been made to assess the accuracy of Nowell's copy of *Alfred-Ine* since only fragments of three leaves from Ot have survived. Yet although any conclusions must be tentative, one may still profitably list every discrepancy between Ot and Nw1.

TABLE 6
DISCREPANCIES BETWEEN MSS OTHO B.xi AND ADDITIONAL 43703

1. Rubric I:	þ Ot; þe Nw1
2. Rubric VII:	circan Ot; circan'e' Nw2
3. Rubric IX:	hæmede Ot; hæmeðe Nw1
4. Rubric XII:	[.]irilscre Ot; ci'o'rl'i'scre Nw2
5. Rubric XIII:	[.]umbra Ot; dumbera Nw1
6. Rubric XV:	þam Ot; þæm Nw1
7. Rubric XVII:	'hi'ora Ot; hiora Nw1
8. Rubric XXII:	nietena Ot; netena Nw1
9. Rubric XXIII:	twyhindum ('y' above i) Ot; twyhyndum Nw1

⁹² See Torkar, *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis', Kap. 20*, pp. 162-67, and Lutz, ed., *Die Version G der Angelsächsischen Chronik*, pp. liii-lviii; but cf. Grant: 'very few words are omitted, homoeoteleuta are very rare and changes of word-order are few' ('Laurence Nowell's transcript of BM Cotton Otho B.xi', p. 124).

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10. Rubric XXVII: monnes wif *Ot*; monnes 'w'if *Nw1* (fif
written originally; wif monnes in
margin *Nw2*)
11. Rubric XXXIIII: boldge[.]ale *Ot*; boldgetale *Nw1*
12. Rubric XXXV: 'ge[.]leoh[.]' *Ot*; gefeohte *Nw1*
13. Rubric XXXVI: [.]ierliscas *Ot*; ciorliscas *Nw1*
14. Rubric XXXVIII: fæhpe *Ot*; færpe *Nw1*
15. Rubric XLIII: oððerra *Ot*; oðerra *Nw1*
16. Rubric XLIII: 'li[...]' *Ot*; li'o'ma *Nw1*
17. Rubric XLV: þeowa *Ot*; þeow'en'a *Nw2*
18. Rubric XLVII: weorcum *Ot*; weorcum *Nw1*
19. Rubric LIII: '[.]an' *Ot*; man *Nw1*
20. Alf. 40: hun'd'nigontig *Ot*; hundnigontig *Nw1*
21. Alf. 40.1: gelimpe *Ot*; gelympe *Nw1*
22. Alf. 40.2: lengtenne *Ot*; lengten *Nw1*
23. Alf. 40.2: folce *Ot*; folc *Nw1*
24. Alf. 41: him *Ot*; him *Nw1*
25. Alf. 41: mægas *Ot*; magas *Nw1*
26. Alf. 41: magum *Ot*; magum *Nw1*
27. Alf. 42.1: Gyf *Ot*; gif *Nw1*
28. Alf. 42.1: gehealde *Ot*; geheald *Nw1*
29. Alf. 42.1: magum *Ot*; magum *Nw1*
30. Alf. 42.1: gebodie *Ot*; gebodie *Nw1*
31. Alf. 42.2: geierne *Ot*; geierne *Nw1*
32. Alf. 42.2: s'i'e *Ot*; sie *Nw1*
33. Alf. 42.3: Gyf *Ot*; gyf *Nw1*

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34. *Alf.* 42.3: he *Ot*; om. *Nw1*
35. *Alf.* 42.4: gyf *Ot*; gif *Nw1*
36. *Alf.* 42.4: wæpenu *Ot*; wæpnu *Nw1*
37. *Alf.* 42.4: him *Ot*; him *Nw1*
38. *Alf.* 42.4: feohte *Ot*; feahte *Nw1*
39. *Alf.* 42.5: cwæðað *Ot*; cwædað *Nw1*
40. *Alf.* 42.5: [...]aford *Ot*; hlaforde *Nw1*
41. *Alf.* 42.6: on woh *Ot*; owoh *Nw1*
42. *Alf.* 42.7: gemeteð *Ot*; gēmeteð *Nw1*
43. *Alf.* 42.7: sweos[...] *Ot*; sweaster *Nw1*
44. *Alf.* 43: [...]rioum *Ot*; frioum *Nw1*
45. *Alf.* 43: monnum *Ot*; monnum *Nw1*
46. *Alf.* 43: þas *Ot*; þæs *Nw1*
47. *Alf.* 43: oferswip'd'e *Ot*; oferswipde *Nw1*
48. *Ine* 67: Gyf *Ot*; Gif *Nw1*
49. *Ine* 67: rædegafole *Ot*; rædegofole *Nw1*
50. *Ine* 74: monnan *Ot*; monna *Nw1*
51. *Ine* 74: þonne *Ot*; þonne *Nw1*
52. *Ine* 74: hlaforde *Ot*; hlaford *Nw1*
53. *Ine* 75: wille *Ot*; 'n'ille *Nw2* (w deleted *Nw1*)
54. *Ine* 75: sægþ *Ot*; segþ *Nw1*
55. *Ine* 75: sealde *Ot*; seald *Nw1*
56. *Ine* 75: oþer *Ot*; oþre *Nw1*
57. *Ine* 75: tiemp *Ot*; tiep *Nw1* ('temep' *Nw2*)
58. *Ine* 75: sealde *Ot*; seald *Nw1*
59. *Ine* 75: buton *Ot*; butan *Nw1*

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These discrepancies fall into several distinct classes. One obvious cause is Nowell's use of abbreviations. Clearly he was not unduly concerned about preserving the orthography of his original, and often words which were written out in full in Ot were abbreviated by Nowell (nos 5, 18, 24, 26, 29, 30, 31, 37, 42, 44 and 45). On each occasion the form of these abbreviations accords with Old English practice. In contrast, no. 51 provides an interesting example of Nowell's peculiar abbreviation for *þonne* (which he often wrote as *þoñe*). Nos 2, 4, 10, 17, 53 and 57 are all instances of corrections made when Nowell collated his transcript with the other manuscripts. Several of the remaining discrepancies were caused by simple errors, such as eye-skip, misreading and omitting letters, and failing to cross the stem of an 'x' (nos 1, 3, 8, 13, 14, 22, 34, 36, 39, 41, 56 and 57). It should also be noted that Nowell sometimes had difficulty distinguishing between 's', 'f' and 'p' in his exemplar. Other discrepancies reflect Elizabethan practice, where 'i' and 'y' were used almost interchangeably (nos 21, 27, 35 and 48), and the terminal 'e' was considered entirely dispensable (nos 23, 28, 40, 50, 52, 55 and 58). On one occasion (no. 33), Nowell failed to follow Ot's capitalization, and on several other occasions he

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replaced æ with a (nos 6, 25, 46) or with e (no. 54).⁹³ Furthermore, although perhaps inadvertently, he amended a reading in Ot (no. 15) to that of E (the oldest manuscript). Most interesting, however, is his treatment of Ot's interpolations (for example, nos 7, 9, 12, 16, 19 and 32). On each occasion he incorporated the letters interlineated in the original without indication, thereby effectively denying the possibility that any of his marginal annotations appeared as interlineations in Ot. Moreover, in several places Nowell marked the transposition of words with a dot between parallel diagonals (/./). These marks also occur in the copy of *II As.* (f. 236r), where they appear to serve no particular purpose and have been crossed out. It is possible that Nowell copied these marks from his original, for on one occasion (no. 10) the mark is visible in Ot under ultra-violet light: see Ot, f. 49r (plate 2, p. 38) and cf. *Nw1*, f. 236v (plate 10, p. 85). The remaining discrepancies (nos 38, 43, 49 and 59) all provide good indications of the difficulty that one has in distinguishing between Nowell's 'o' and his ill-formed 'a'.

⁹³ Grant observed: 'It is clear that Nowell either did not know or did not care about the value of æ, which he often confuses with a, e, and ea' ('Laurence Nowell's transcript of BM Cotton Otho B.xi', p. 121).

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PROVENANCE

In the preface to the *Archaionomia*, Lambarde explained how Nowell provided him with copies of the law-codes, suggesting that he translate them into Latin and publish them.⁹⁴ This transcript was presumably one of those given to Lambarde by Nowell before the latter went to France on 25 March 1567,⁹⁵ a journey from which he apparently never returned.⁹⁶ It is listed in the appendix to Dr Randolph's 'Memoirs of William Lambarde, Esq;', as the first item in a catalogue of 'Collectanea of Laurence Nowell and William Lambarde, in the possession of Multon Lambard,

⁹⁴ Lambarde, ed., 'Epistola', in *Archaionomia*. The relevant passage is extracted below (p. 113).

⁹⁵ In the Lambarde family diary (p. 88), s.a. 1567, William wrote the following entry: 'Anno a nato Saluatore 1567 in Galliam uehitur Laurentius Noelus, mei amantissimus' (25 March). The diary is a remarkable book begun by William c. 1554, and continued intermittently by his heirs until the death of his last lineal descendant (in 1976). It is now London, Drapers' Company, MS H./Add.27.

⁹⁶ See Warnicke, 'Note on a Court of Requests case of 1571', p. 253. Through examination of a 1571 action brought against William Lambarde by Nowell's brothers and seven prospective beneficiaries under Nowell's will, Warnicke established beyond doubt that Laurence Nowell the antiquary was not Laurence Nowell the Dean of Litchfield. Subsequent studies have ratified Warnicke's conclusions: see Hahn, 'The Identity of the Antiquary Laurence Nowell', pp. 10-18, and Berkhout, 'The Pedigree of Laurence Nowell the Antiquary', pp. 15-26; but cf. Black, 'Laurence Nowell's "disappearance" in Germany and its bearing on the whereabouts of his collectanea 1568-1572', who discussed the same case apparently without knowledge of Warnicke's article. In a more recent discussion (entitled 'Some New Light on the Career of Laurence Nowell the Antiquary'), she appears to accept Warnicke's conclusions.

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Esq;',⁹⁷ and it is readily identifiable not only from the contents as they are described, but also from the citation therein of Nwl's dated inscription. The Lambarde family library remained virtually intact until the beginning of this century, when the family seat at Sevenoaks was sold and demolished. The library was dispersed at two sales (or possibly more) and, while this manuscript is not listed in either of the two sale catalogues, several of the other transcripts named in the list of collectanea were certainly auctioned.⁹⁸

This transcript was 'rediscovered' in 1934 when it was presented to the British Museum by Thomas Evelyn Scott-Ellis, Eighth Baron Howard de Walden, together with seven other transcripts and twenty-eight early printed books (twelve of which bear Lambarde's *ex libris*, and five that of Nowell). The importance of this gift was first recognized by Robin Flower, who described the contents of the transcripts, and later used them as evidence in his seminal article on Laurence Nowell.⁹⁹ They are now BL, MSS Additional 43703-43710.

⁹⁷ 'Memoirs of William Lambarde, Esq;', in *Bibliotheca Topographica Britannica*, edited by Nichols, pp. 493-532, at pp. 510-12.

⁹⁸ Items 3, 8-10 and 15 were sold. See *The Lambarde Catalogue of Early Printed Books* (Francis Edwards, November 1909) and *A Catalogue of Rare and Valuable Books, with Manuscripts and Books originally owned by William Lambarde* (Hodgson's, 19 June 1924), lots 504-643. Cf. Warnicke, *William Lambarde*, p. 139.

⁹⁹ Flower, 'Laurence Nowell and a recovered Anglo-Saxon poem', pp. 130-32, and 'Laurence Nowell and the Discovery of England'.

- (8) CANTERBURY, CHRIST CHURCH CATHEDRAL LIBRARY, MS
LITERARY B.2, ff. 245r-49v, 252v-61r, 266v-69v:
incomplete; Bib. Int. pro-Alf. 38, Ine 54-76.3
(end): Nw3 (called So by Liebermann)
-

CONTENTS AND PROVENANCE

This folio-sized volume contains a collection of miscellaneous documents (accounts, treatises, transcripts, etc.), written on paper of varying size, and bound together in a contemporary embossed-calf binding. It belonged to William Somner (1606-69),¹⁰⁰ whose books and manuscripts were purchased upon his death by the Dean and Chapter of Canterbury Cathedral.¹⁰¹ The manuscripts were deposited in the Cathedral Library; the papers, including his notes and correspondence, were removed to the Cathedral Audit House, where they were destroyed in the fire of 1670.¹⁰² This manuscript is described, albeit inaccurately, by C.E. Woodruff in his catalogue of the

¹⁰⁰ A useful biography of Somner is contained in *The Antiquities of Canterbury*, edited by William Urry, pp. v-xxiv.

¹⁰¹ 'Somner's Collections' are described in the *Ninth Report of the Royal Commission on Historical Manuscripts. Part 1: Report and Appendix*, pp. 124-25.

¹⁰² This fact is lamented by Bishop White Kennett in his 'Life of Mr. Somner' (p. 121). The best version of this biography ('newly revis'd, and much enlarged') is printed in Somner, *A Treatise of Gavelkind*, pp. 1-136. Kennett also appended a list of 'Mr. Somner's Posthumous Manuscripts, now in the Library of Christ's-Church Canterbury' to the *Life* (pp. 137-38).

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literary manuscripts in the possession^{of} Christ Church, Canterbury.¹⁰³ The present description is concerned only with the tenth item in the manuscript, described by Woodruff as 'A copy (Somner's?) of the laws of King Alfred'.¹⁰⁴ It is, in fact, an incomplete copy of *Alfred-Ine* (Bib. Int. pro-*Alf.* 38, *Ine* 54-76.3), together with transcripts of *II As.* 1-15 (ff. 262v-65v) and *II Edg.* 4.1 to *III Edg.* 7.2 (ff. 250v-51v). Felix Liebermann thought that this transcript of *Alfred-Ine* was the work of Somner himself (hence the siglum *So*).¹⁰⁵ He was, however, mistaken; it was undoubtedly made by Laurence Nowell, probably with reference to his other transcript (*Nw1* with *Nw2*). It was not annotated by William Lambarde, nor does it bear any signs of use by a printer; but it is clearly a working copy, and, like MSS Literary E.1 and E.2, it presumably came from the library of William

¹⁰³ This manuscript, the press mark of which is given incorrectly as 'B.4', is no. 96 in the catalogue; see Woodruff, ed., *A Catalogue of the Manuscript Books in the Library of Christ Church Canterbury*, p. 49. The reference in the index (p. 55) to 'Alfred, King, Laws of' is also misleading and inaccurate. It should read '96 (10)'.

¹⁰⁴ Woodruff, *A Catalogue of the Manuscript Books in the Library of Christ Church Canterbury*, p. 50.

¹⁰⁵ Liebermann, ed., *Gesetze*, I, p. xl.

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Lambarde.¹⁰⁶ These manuscripts bear Somner's *ex libris* (immediately above Lambarde's 'Saxon' signature), and inscriptions stating how he acquired the books indirectly from the Lambarde library. To quote from the fly-leaf of MS Literary E.2:

Guilielmi Somneri Cantuariensis, ex dono v.
dignissimi, Thomæ Godfrey Hodifordensis apud
Cantianos, armigeri, Guil. Lambardi quondam
libri huius domini, generi doctissimi.

DATE

Unlike BL, MS Additional 43703 (Nw1 and Nw2), this transcript is undated; but it cannot have been made earlier than 1562, nor later than 1567 (since it is related to Nw1 which was written in 1562, and Nowell left England permanently in 1567).

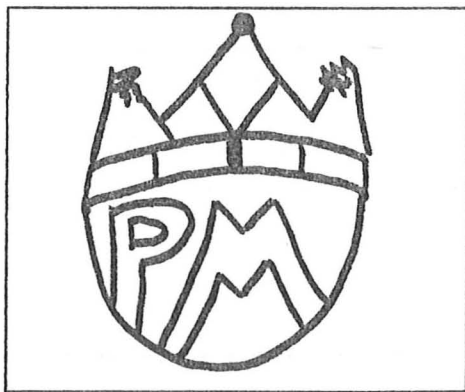
¹⁰⁶ Cf. Canterbury Cathedral Library, MS Literary E.2., which contains *I-II Cnut*, and was signed by Lambarde in 1567 with his 'Saxon' signature ('pylle ham lampyrhte'). It was presumably one of those transcripts provided by Laurence Nowell for the publication of the *Archaionomia*, and it bears traces of printers' ink (and thumb-prints) throughout. On one of the final leaves, Lambarde wrote the inscription 'excusum 3 Septemb. 1568'. In carrying signs of use by a printer, it is unique among the surviving Nowell transcripts; collation reveals that the text is very close to that of the *editio princeps* (with only minor alterations such as the replacement of 'ð' with 'þ'). The scope of the present work will not permit a detailed investigation of MS Literary E.2; this deficiency will be remedied in my forthcoming facsimile of Lambarde's *Archaionomia* (to be published in the series *Early Studies in Germanic Philology*).

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DESCRIPTION

This manuscript, written by Nowell in an imitative Anglo-Saxon script, bears the title 'Leges Aluredi' on f. 245r (see plate 11 overleaf). It contains twenty-four leaves, now out of order, and is incomplete (the *dicta probatoria*, or opening and closing words of each folio, are given below). The leaves measure approximately 297mm x 200mm; the written space 230mm x 144mm. The text was written in a dark brown ink; no decoration or colour was used. The number of lines per page varies (usually between twenty-five and twenty-eight). The leaves were ruled with a hard point. The paper carries the following watermark.

FIGURE 4



Most of the leaves were paginated by Nowell on the verso; they have been re-foliated in pencil on the recto of each leaf, in the top left-hand corner.

Drihten þæt ƿƿeacende to moƿes þæt ƿorð 7 þæt cƿæð
 ic eom drihten þin ƿod. ic þe ut ƿelædde of egyptaland
 7 of heora þeodome. Ne lara þu oðra fremda ƿodas ofer
 me.

Ne minne noman ne eƿðu on idelnesse. ƿorðon þe þu ne
 biſt unſcylðig ƿið me ƿið þu on idelnesse cƿeſt minne no.
 man. Gemyne þu þæt þu halgic þone ƿeſt dæg ƿƿeacod eop
 vi dagas 7 on þa ƿeopðan ƿeſeð ƿe eop; ƿorðan on vi da.
 gum cƿiſe ƿeƿorhte heora ƿas 7 eopðan ƿas 7 ealle ƿeƿeap.
 ta þe on him ƿind. 7 hine ƿeƿeſe on þone ƿeopðan dæge 7
 ƿorðan drihten hine ƿealƿod. Ðra þinum fader 7 þin
 meder þæt þu ƿe bið leng libbend on eopðan þa þe drihten
 þe ƿealðe. Ne ƿleah þu. Ne liſe þu deapunga. Ne ſtala þu
 Ne ƿealða þu ƿeſe þu leaƿe ƿeƿeƿeƿe. Ne ƿilna þu ƿineƿ ne
 ſean ƿeƿeƿe mid unƿiht mid unƿiht. Ne ƿƿeƿe þe ƿyldene ƿod.
 dæg oððe ƿyſƿeƿe. þæt ƿine þu domas þe þu him ƿeƿeƿe ƿealðe.
 þæt ƿine þa domas þe þu him ƿeƿeƿe ƿealðe. Giſ þa ƿeƿeƿe
 cƿiſeƿe þe ƿe vi ƿeap þe ƿeƿe þe bið ƿeopðan ƿealðe ƿeƿe ƿe
 eopunga. oððe hƿilec hƿealðe þe in eode mid ƿƿilec ƿealðe he ne.
 Giſ þe ƿiſ ƿeƿe hƿealðe ƿealðe he ne mid him ƿiſ þe hƿeopðan him
 ƿiſ ƿealðe ƿealðe he 7 hine beapn þæt hƿeopðan. Giſ þe þe ƿeopðan
 cƿæðe. Nele ic ƿealðe minū hƿeopðan ne ƿealðe minū ƿiſ ne ƿe
 minū beapne; ne ƿealðe minū ƿeƿe. beapn hine þone hiƿ hƿeopðan
 to þaƿ temple ƿealðe 7 þu hƿeopðan hiƿ eape mid æle to taene

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DICTA PROBATORIA (FIRST AND LAST WORDS OF EACH FOLIO)

f. 245r	(p.1):	Drihten was spræcende (þ)
f. 245v	(p.4):	Selle twegen wið (minum)
f. 246r	(---):	BLANK
f. 246v	(p.2):	þ he sie (te)
f. 247r	(---):	BLANK
f. 247v	(p.3):	te sio scyld (selle)
f. 248r	(---):	BLANK
f. 248v	(p.5):	minum sweorde 7 (no catch)
f. 249r	(---):	BLANK
f. 249v	(p.6):	Pis sindon þa (on)
f. 250r	(---):	BLANK
f. 250v	(---):	ðam andagum gelæst
f. 251r	(---):	BLANK
f. 251v	(---):	mid aðe gecyðan (rade)
f. 252r	(---):	BLANK
f. 252v	(p.7):	on eow settan (ic)
f. 253r	(---):	BLANK
f. 253v	(p.8):	Ic þa Ælf'r'ed (neodan)
f. 254r	(---):	BLANK
f. 254v	(p.9):	neodan scyle 7 (ealles)
f. 255r	(---):	BLANK
f. 255v	(p.10):	ealles þas þe (Be)
f. 256r	(---):	BLANK
f. 256v	(p.11):	Be ðonne þe (Be cyr)
f. 257r	(---):	BLANK
f. 257v	(p.12):	Be cyrliscre fæmnan (Be þam)
f. 258r	(p.13):	Be þam þe (Be eofot)
f. 258v	(---):	BLANK
f. 259r	(p.14):	Be eofotes ondetlan (oð)
f. 259v	(---):	BLANK
f. 260r	(p.15):	oðswerian wille teo (gan)
f. 260v	(---):	BLANK
f. 261r	(p.16):	gan 7 þonne him (Be gefeoht)
f. 261v	(---):	BLANK
f. 262r	(---):	BLANK
f. 262v	(---):	(Leges Æthelstani) On ærest þ (oft)
f. 263r	(---):	BLANK
f. 263v	(---):	oft swa him (tyh)
f. 264r	(---):	BLANK
f. 264v	(---):	tyhlod wæron 7 (fa sume)
f. 265r	(---):	BLANK
f. 265v	(---):	fa sume 7 (Be scyld)
f. 266r	(---):	BLANK
f. 266v	(---):	(Leges Inæ) be .xxx. hida (Be cyric)
f. 267r	(---):	BLANK
f. 267v	(---):	Be cyricsceat. Cyric (Be twyhyn)
f. 268r	(---):	BLANK
f. 268v	(---):	Be twyhyndum wære. (mon)
f. 269r	(---):	BLANK
f. 269v	(---):	mon æt befehð...be healfum þam.

- (9) LONDON, BRITISH LIBRARY, HENRY DAVIS COLLECTION,
[MS] M30, unpaginated, extracts from the laws of
Alfred; Bib. Int. 49.8-Alf. 77: Nw4
-

INTRODUCTION

The discovery of this manuscript represents an interesting addition to the corpus of Anglo-Saxon legal manuscripts, and it serves to remind one that valuable historical materials can appear in accessible (albeit unexpected) places.¹⁰⁷ It has never been mentioned in any published literature in the field of Anglo-Saxon studies, and was unknown to recent scholars who have discussed Nowell's transcripts, and the question of lost manuscripts of Anglo-Saxon law.¹⁰⁸ Indeed the only published reference to this manuscript is contained in Dr Mirjam Foot's catalogue of the Henry Davis gift of bookbindings, where it is described as 'a binding c. 1560-70. "Laws of King Alfred". MS on vellum (Anglo-Saxon

¹⁰⁷ I am indebted to Professor Carl T. Berkhout of the University of Arizona for drawing my attention to this manuscript. It was Professor Berkhout who most recently identified this transcript as the work of Laurence Nowell. A paper in which he discusses it will be published in the proceedings of a conference ('The Editing of Old English Texts') held at Manchester on 25-27 May, 1990.

¹⁰⁸ See, for example, Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, pp. 37-148, and Grant, 'Laurence Nowell's transcript of BM Cotton Otho B.xi'.

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and English), [c. 1550]; ruled'.¹⁰⁹ The importance of the manuscript is two-fold. First, it includes variant readings which are related to Nw2, and do not correspond to any of the known Anglo-Saxon manuscripts. These almost certainly provide evidence of at least one lost manuscript, which existed in the sixteenth century. This is a proposition of some importance, as the sources of texts in Lambarde's *Archaionomia* have been a subject of fervent debate over the past century.¹¹⁰ Secondly, it provides the only sustained sixteenth-century translation into English of the Anglo-Saxon laws, and the only extant English translation of any text by Laurence Nowell. This is of interest if one wishes to ascertain how much of the antiquaries' knowledge about Anglo-Saxon law, and Old English legal terminology, was achieved through study of the vernacular materials, and how much was derived from comparison with the twelfth-century Latin translation of the law-codes contained in *Quadripartitus*.

¹⁰⁹ See Foot, *The Henry Davis Gift. A Collection of Bookbindings*, II, no. 44, p. 75.

¹¹⁰ Sisam and Liebermann debated the question of lost manuscripts with regard to Lambarde's text of Æthelstan's laws; for details, see below, pp. 112-24.

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CONTENTS

The manuscript, which is complete, contains extracts from the laws of King Alfred (Bib. Int. 49.8-*Alf.* 77). It does not contain the table of rubrics (although many rubrics are written above the relevant clauses), nor does it contain the full *Biblical Introduction*. It also lacks the *Ine* appendix.

DATE

Unlike BL, MS Additional 43703 (Nw1 and Nw2), this transcript is not signed and dated. There is no doubt, however, that it was written by Laurence Nowell, in which case it must have been composed between 1562 and 1567.¹¹¹ Textually, it is closely related to Nw1, incorporating into the main body of its text several words and phrases also in Nw2. This suggests that it postdates both Nw1 and Nw2.

¹¹¹ Cf. above, pp. 86 and 98.

Gif he foran eaƿu asnaſe ƿyld þu:
 ne ƿiſe; Gif hine man twi ƿreul:
 dri on þaſe dæd: ƿe ƿiſe hine
 be þā ƿiſe: 7 mid þi þi ƿiſe aƿyl:
 le; Gif ſe oſd ſie uſon þiſe ƿiſe:
 ƿiſe þon hindre ƿiſe ſceafte; Gif
 hie ſynd bu ƿe licc oſd 7 hindre ƿiſe
 ſceafte þi ſi butan ƿleo.

Be bold ƿe tale.

Gif mon ƿille of bold ƿe tale in o:
 þiſe bold ƿe tale hlaſon ſcan: do þi
 mid þaſe caldorn mannſe ƿe tale:
 neſſe þe he ær in hiſe ſciſe folƿode:
 Gif he hit butan hiſe ƿe tale neſſe
 do: ƿe tale ſe þe hine to miſe ƿe tale:
 me. cxx. ſcilt: to ƿiſe: dæle he hƿe:
 ƿe tale



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DESCRIPTION

Collation

a⁴, I², II-XII⁴, b⁴

This codex contains forty-six parchment leaves and eight paper fly-leaves. The parchment leaves measure approximately 212mm x 152mm, while the dimensions of the written space are 152mm x 92mm. There are sixteen lines per page. Unlike the other Nowell transcripts, the margins of this manuscript were ruled in ink, and prickings were used to guide the ruling. The Old English text is written in Laurence Nowell's imitative Anglo-Saxon script, and the translation in his italic hand. The manuscript was written with great care; generally errors were erased and not scored out, and the initials are frequently coloured red, blue or green (or a combination of the three). They are, on occasion, elaborately drawn. The initial words of the text, 'IC ÆLFRED', are enlarged and written in blue and gold. The chapter-headings, which were written above the laws which they rubricate in spaces left for the purpose, begin with a coloured initial and are written in a lighter brown ink than the main text. On one occasion space was left for a rubric, and the initial was drawn, but the heading was not added; similarly, in the translation, Nowell twice neglected to add rubrics. The text is carefully punctuated using the

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raised point, the *punctus elevatus* (. /), the *punctus uersus* (;), and a terminal (.̇). This could be the punctuation of one of Nowell's exemplars; otherwise it is a remarkably good imitation of Anglo-Saxon practice. The manuscript is bound in a contemporary parchment binding, and is 'tooled in gold to a panel design'.¹¹² The edges of the leaves are tipped in gold. The book is backed with a strip of late medieval manuscript. There are the remains of two sets of ties.

PROVENANCE

The manuscript was written by Laurence Nowell. To judge from the care with which he made this transcript, and the obvious expense which he incurred in doing so, it is clear that the text was not intended as a working copy. This impression is confirmed by comparison with Nowell's other transcripts which, though written in an imitative Anglo-Saxon script, are frequently scored and heavily annotated. They are also written on paper, without the use of colour. It therefore seems reasonable to suppose that this manuscript was written as a presentation copy, possibly for William Cecil (afterwards Lord Burghley), who owned BL, MS Cotton Otho B.xi when Nowell transcribed it in 1562. This supposition is recommended by the fact that the tooling of this binding occurs on two other

¹¹² See Foot, *The Henry Davis Gift*, II, no. 44, p. 75.

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book-bindings of the sixteenth century, one of which belonged to William Cecil and bears his signature (dated 1563).¹¹³ It is, however, by no means clear that this transcript ever reached the hands of its intended beneficiary. The only *ex libris* is that of Thomas Lambarde, who signed the fly-leaf in 1634, and described the contents thus: 'K. Ælfrede Lawes in Saxon and Englishe'. He had, presumably, inherited the book as part of his grandfather's library, which may suggest that Nowell left the codex with William Lambarde, together with his other transcripts, when he went to France in 1567. Certainly Lambarde did not sign the book, which was his usual practice, and the only conceivable traces of his hand occur as light pencil annotations on ff. 5v, 23r, 26r, 27r, 32r, 33r. Alternatively, these annotations could be in Nowell's own hand. The book does not correspond with any of those listed in the catalogues pertaining to the sale of the Lambarde family library, which was dispersed at two sales in 1910 and 1924, and which included many books once owned by William and several of Nowell's transcripts. The first mention of the codex occurs in a Sotheby's catalogue of 1943, when it was sold at the behest of Amy Charlotte Hare.¹¹⁴ By this time, it had been seen by Sir George Warner of the

¹¹³ Foot, *The Henry Davis Gift*, II, no. 44, p. 75.

¹¹⁴ Sotheby and Co., 21 April 1943, lot 263.

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British Museum who attributed it correctly to Laurence Nowell, and by F.W. Maitland, who pronounced:¹¹⁵

It looks as if a very handsome 'presentation copy' had been prepared for some one or another. I should think it possible that so fine a specimen of this artificial 'Anglo-Saxon' script might be of considerable value. I should not imagine that it is valuable for any other reason, but I have not collated the text with Lambard's published book.

Dicta Probatoria (FIRST AND LAST WORDS OF EACH FOLIO)

The manuscript has not yet been foliated. The *dicta probatoria* are therefore given below to allow accurate referencing. The catch-word, where used, is given in brackets.

1rv:	BLANK
2rv:	BLANK
3r:	BLANK
3v:	Ic Ælfred cyning...in Ines (dæge)
4r:	I Alfrede king...of Ine (my)
4v:	dæge mines mæges...to æ (nigum)
5r:	my kinsman &...or to (any)
5v:	nigum unryhtum fultume...polige his (wæpna)
6r:	any uniust ayde...his wea (pon)
6v:	wæpna 7 his...þe arwyrð (sie)
7r:	pon & his...honorale, he (shall)
7v:	sie age he...oððe ealdorman (nes)
8r:	shall have three...an alderman (nes)
8v:	nes borges bryce...hine. (Be circ)
9r:	nes borghbreache or...his lordes were.
9v:	Be circena fripe...gefan utræccan wil (le)
10r:	Of the libertie...unto his ennemie
10v:	le gegealden hie...oppe on ea (stron)
11r:	they shall keepe...or in ca(ster)

¹¹⁵ These notes are kept with the manuscript. The comment by Warner is dated 7 June 1907. F.W. Maitland's notes, on this manuscript and a Year Book of Edward IV ('written by Robert Chalmer'), were written on the letterhead of Downing College, Cambridge, and were signed and dated 26 November 1906. This may be Maitland's very last academic comment, as he died three weeks later on 19 December, 1906.

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11v: stron oppe on...mynstre ut (alæde)
 12r: ster or upon...of her cloyster
 12v: alæde butan cyninges...þ be (arn)
 13r: with out the...& the (childe)
 13v: arn be þæs...gebete. (Be ceorl)
 14r: & for the...paye 40 shill.
 14v: Be ceorliscre fæmnan...swa hiora (sie)
 15r: of hauing to...neuer to ma (ny)
 15v: sie mid ·v·...scill; Gif (befo)
 16r: ny 5 pence...in the (præ)
 16v: beforan oðrum bisceop...oppe on (hire)
 17r: præsence of an...garmentes or (on)
 17v: hire breost butan...gif hie (willað)
 18r: on her brest...themselves together to
 18v: willað to þam...monnnes munuc (feoh)
 19r: to paye his...other mannes (munke)
 19v: feoh opfæste butan...gif hie (willað)
 20r: munke to be...pay the (wite)
 20v: fo to þam...þingie; (Be twy)
 21r: wite. Of the...compound for him
 21v: Be twyhindum men...wifmon (to)
 22r: of the slaughter...mayden un (der)
 22v: to nydhæmede...swa geradne (mon)
 23r: der age the...the'other half. (If)
 23v: mon mon ofslea...feower ciricum (7)
 24r: If suche a...shall make (his)
 24v: 7 se oper...gerefan. (Be cyrl)
 25r: his first othe...requisite unto them.
 25v: Be cyrlisces monnes...butan wite (gif)
 26r: Of the binding...the wite. (If)
 26v: Gif he foran...dæle he hwæ (ðere)
 27r: If he runne...It shall (be)
 27v: ðere þ healfe...gingran gelympe (oppe)
 28r: be diuided the...elles of (the)
 28v: oppe cyninges preoste...bisceopes 7 eal (dor)
 29r: the kinges preste...an aldermans (60)
 29v: dor monnes ·lx·...weere þe (hit)
 30r: threescore shill. A...who (at the)
 30v: hit on fruman...hine ·xxx· (nihta)
 31r: at the beginning...30 dayes (safe)
 31v: nihta gesundne 7...he feohtan (on)
 32r: safe & sound...& fight (with)
 32v: on hine; Gif...gemeteð operne (æt)
 33r: with him. If...with his (married)
 33v: æt his æwum...ær sancta ma(rian)
 34r: married wife the...ladies daye (daye)
 34v: rian mæssan 7...bote; Gif be (foran)
 35r: daye. At all...it be (wthout)
 35v: foran feaxe beoð...toð on fo (ran)
 36r: without the heare...other fore (tooth)
 36v: ran heafde of...utflowe gebe (te)
 37r: tooth he shall...ioynte the a (mendes)

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37v: te mid .xxx. scill...to bote (gif)
38r: mendes in 30...shill for amendes.
38v: Gif se lytla...bote. Gif (se)
39r: If the litle...it be (the)
39v: se sie sio...beforan sleafa. (7)
40r: the second toe...& by (neathe)
40v: 7 beneopan cneowe...rib forslea bin (nan)
41r: neathe the knee...others ribbe (wthin)
41v: nan gehalre hyde...geselle mon (pæs)
42r: wthinne the skine...shill for (a)
42v: pæs to bote...him witan (ryht)
43r: amends. If a...skille & iudgement (iudge)
43v: ryhtre 7 mare gereccan.
44r: iudge it convenient...have rayther more.
44rv: BLANK
45rv: BLANK
46rv: BLANK

CHAPTER TWO. THE TEXTUAL TRANSMISSION

INTRODUCTION

Having considered the codicology and date of each of the manuscripts in the last chapter, one must now examine them textually with a view to elucidating the relationship between them. The discovery over the last sixty years of three sixteenth-century transcripts written by Laurence Nowell (Nw1, Nw3 and Nw4) has made this re-evaluation particularly necessary. The transcript Nw1 reveals much about Ot that was not apparent to previous editors working after the Cotton fire of 1731, and it allows one to reconsider whether Ot was copied directly from E. This is important, not least because it is necessary to discover how many possible lines of descent from the archetype may be represented by the extant manuscripts of *Alfred-Ine*. The annotations in this transcript (Nw2), together with Nw3, also provide important evidence which may assist one in the identification of the manuscripts seen by the early legal antiquaries, and, more particularly, those used by Nowell and Lambarde to prepare the *editio princeps*. Furthermore, the unique readings in these transcripts may permit one to decide whether the antiquaries had access to manuscripts no longer available. This is a very real possibility, for although many codices were destroyed at the time of the dissolution of the monasteries, others which survived the Reformation subsequently suffered

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ignominious destruction during the Commonwealth period. Legal manuscripts used by Nowell and Lambarde, which never found their way into any of the major collections, could conceivably have suffered the same fate as the Copenhagen Ælfric manuscript.¹

The importance of antiquarian work on manuscripts of the Anglo-Saxon laws has been recognized since last century, although initially for the wrong reasons. Lambarde's 'epistola', which prefaces the *Archaionomia*, is the natural starting-point for any discussion of these matters:

Obtulit mihi superiori anno Laurentius
Noelus, diligentissimus investigator
antiquitatis, mihi que multa & iucunda
consuetudine coniunctus, ac qui me (quicumque
in hoc genere sim) effecit, priscas Anglorum
leges, antiquissima Saxonum lingua, et
literis conscriptas, atque a me (quoniam ei
tū erat trans mare eundum) ut latinas facerem,
ac per uulgarem vehementer flagitavit.

This is all that one may learn directly from any of Lambarde's writings about his sources and the methods which he used to prepare the *Archaionomia*. It is clear that he published this edition and translation at the behest of Laurence Nowell, who provided the young lawyer

¹ See Fausbøll, ed., *Fifty-Six Ælfric Fragments*. In a review of this edition, Dumville drew attention to two folios (ff. 8r and 10r) with marginal annotations in an italic hand of the sixteenth or seventeenth century. As he put it, 'the implication is that this manuscript had been used by a Renaissance student of Old English, but that that phase of its history had constituted no protection against subsequent export for bindery-use' (*Archiv* 141 (1989), 132-34 at p. 133).

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with texts from which to work. That these texts were almost certainly transcripts made by Nowell himself (many of which are extant) has been suggested already, and from this one might reasonably deduce that it was Nowell and not Lambarde who was responsible for the character of the Old English texts in the *Archaionomia*.² The task of identifying those manuscripts used by Nowell falls to Lambarde's editorial successors. It is a two-stage process, whereby one must first look for physical traces of use or ownership by Nowell or Lambarde, and then contrast the texts of Nowell's transcripts with the extant codices, in an attempt to identify his immediate sources. The results arising from the first part of this procedure have been given in the previous chapter, and it will be necessary to employ the second stage of this approach below, when considering the relationship of Nowell's three transcripts to the surviving manuscripts of *Alfred-Ine*.

In his edition, Milton Turk raised the 'interesting question' of Lambarde's sources, but he confined his comments to a general discussion of the Anglo-Saxon manuscripts which are known to have been owned by either John Joscelyn or Matthew Parker (namely E, B and G),

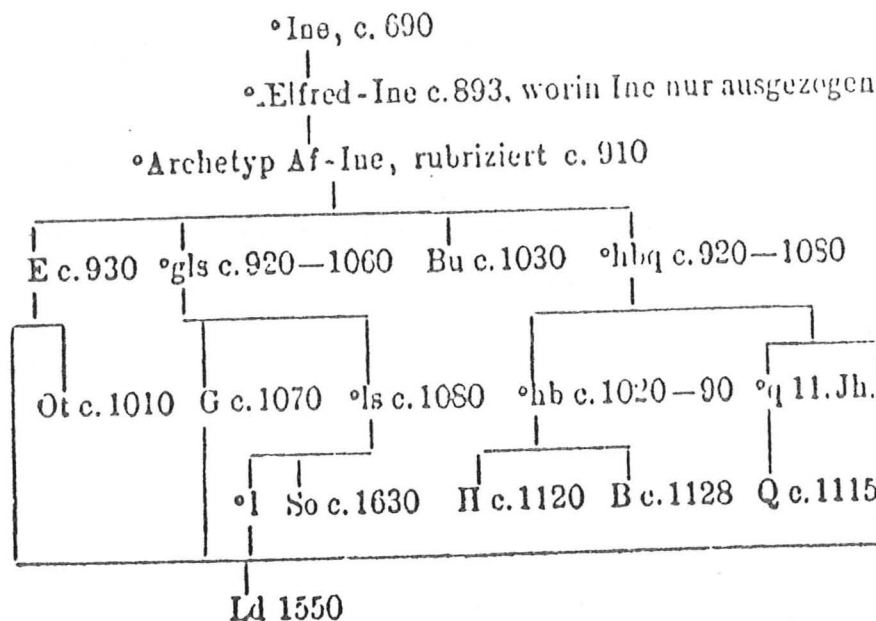
² This suggestion is supported by Canterbury Cathedral Library, MS Literary E.2, a transcript of BL, MS Harley 55, from which the text of Canute's laws in the *Archaionomia* was printed. The transcript is Nowell's, and Lambarde's only contribution consists of some notes to the printer, and the addition of clause numeration in the margin.

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implying ('independent of a comparison of his text') that Lambarde would have used the legal manuscripts known to these antiquaries.³ Turk did not raise the possibility that lost sources might have been used to prepare the *editio princeps*, and (as with so many matters) the problem was first addressed by Felix Liebermann in his edition. Not only was Liebermann the first editor to provide anything resembling a comprehensive catalogue of Anglo-Saxon legal manuscripts, but he was also the first person to trace in detail the relationship between them. Unlike Turk, Liebermann conjectured lost manuscripts in almost all of his stemmata; in the case of *Alfred-Ine*, several of his conjectural lost sources were proposed on the basis of a single fallacious assumption. Liebermann thought that Lambarde's text of this code descended from a lost manuscript (1) which was itself derived, together with Nw3 (So), from another lost manuscript (1s). Since it will be necessary to refer to Liebermann's stemma of this code several times throughout the discussion which follows, it has been reproduced overleaf.

³ Turk, ed., *The Legal Code*, pp. 17-18.

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Note ° = lost

FIGURE 5

Liebermann's conjectures are derived ultimately from a misattribution of Nw3 (So) to William Somner, whose connection with this manuscript has been discussed above.⁴ Somner acquired Nw3 indirectly from the Lambarde library, together with at least two other transcripts by Nowell, both of which bear Lambarde's *ex libris* (Canterbury, Christ Church Cathedral Library, MSS Literary E.1 and E.2). The manuscript Nw3 (So), although undoubtedly written by Laurence Nowell, bears no explicit

⁴ See above, pp. 96-98.

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traces of its origin. Had Liebermann seen MSS Literary E.1 and E.2 he might have recognized the physical similarities between them and Nw3 (So), and thus realized that the latter was also by Nowell. Yet, as it happened, he did not see them, and consequently he failed to perceive the true significance of Nw3. This was unfortunate, for Nw3 is likely to be one of the manuscripts referred to in the 'epistola' to the *Archaionomia*, and was presumably given to Lambarde by Nowell in 1567. Having failed to realize this, Liebermann was forced to invent a source for the text of *Alfred-Ine* in the *editio princeps*. He related this source (1) to Nw3 (So) because of the undeniable textual similarities between that transcript and the text of the *Archaionomia*. Yet despite Liebermann's ingenuity, this error necessarily affects the utility of his stemma.

Even before the rediscovery in 1934 of several other Nowell transcripts (now BL, MSS Additional 43703-43710), Liebermann's conjectures about the number of lost manuscripts available to William Lambarde had been challenged by Kenneth Sisam. Sisam (rather unkindly) used a review of Attenborough's edition of the law-codes to question Liebermann's treatment of the textual transmission of *I As.* and the *Ordinance on Charities*. Having drawn attention to several of the more obvious textual puzzles, he complained that 'Mr Attenborough

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...passes by without curiosity problems that were almost forced upon his attention'.⁵ This criticism was partly justified; the texts of these codes in Lambarde's *Archaionomia* are strange enough to demand close attention by an editor, especially when said editor cites variant readings from the *editio princeps* in his critical apparatus. On the other hand, one can hardly blame Attenborough for relying heavily on Liebermann's erudition, when the dust raised by the publication of the *Gesetze* had barely settled. Sisam judged Attenborough's work by his own exacting standards; he remains one of the few scholars to have directly challenged Liebermann's commanding textual treatment of the law-codes, and posterity must surely judge this as more to his credit than to Attenborough's shame.

Sisam questioned both the nature of Lambarde's sources and how he might have used them. These questions are relevant to the present discussion, for Nowell's transcripts of *Alfred-Ine* preserve readings not found in any of the extant Anglo-Saxon and Anglo-Norman manuscripts, and one must necessarily ask whether these provide evidence of lost vernacular manuscripts or are simply the result of Elizabethan forgery or ingenuity. Sisam argued against the authenticity of *I As.* and the

⁵ Sisam, 'A review of *The Laws of the Earliest English Kings*', p. 100.

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Ordinance on the basis that their Old English shows both an 'extraordinary neglect of the rules of Old English accidence and syntax' and a 'diffused caninity of expression'.⁶ He found in the 'modernity of the constructions', the 'freedom from grammatical restraints', and the 'half-Elizabethan spellings' good evidence of translation from a Latin version of the codes, which he identified as the 'London' recension of *Quadripartitus*.⁷ By reference to entries in Nowell's dictionary of Old English (now Oxford, Bodleian Library, MS Selden supra 63), he further suggested that Nowell was responsible for these translations and that Lambarde accepted them in good faith, copying some of the spurious words into the dictionary after he took possession of it in 1567.⁸ Thus he concluded that while Lambarde could have used old manuscripts, given to him by Nowell, to prepare the texts in the *Archaionomia*, it is more probable that he received from his mentor 'a transcript of the Laws in the imitative Anglo-Saxon script that scholars of the time used in making copies, whether for private use or for the printer'. Sisam continued:⁹

⁶ *Ibid.*, p. 101.

⁷ That Nowell, Lambarde and Joscelyn all used *Quadripartitus* is clear from annotations in Nw1, and from glosses made by Joscelyn in G. For details, see above pp. 46 and 87.

⁸ Sisam, 'A review of *The Laws of the Earliest English Kings*', p. 103.

⁹ *Ibid.*

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The spurious passages might easily creep into such a transcript: for if Nowell copied from a MS. like CCCC. 383, or Cotton Otho B XI, which begin Athelstan's Laws with *II Athelstan*, reference to a MS. of the *Quadripartitus* would at once disclose the gap; and what more natural to an Elizabethan antiquary than to fill it as best he could, not with intent to deceive, but simply to complete his collection of Old English texts?

This is one of those rare occurrences of a reasoned conjecture being subsequently verified by a fortuitous discovery. The suggestion quoted above was made in 1923, over ten years before donation to the British Museum of eight transcripts by Nowell, in an 'imitative Anglo-Saxon script'. One of these transcripts (Nw1) was indeed a copy of Cotton Otho B.xi (Ot), albeit without the texts of *I As.* and the *Ordinance* which are found in the *Archaionomia*. This does not disprove Sisam's conjecture, for it is quite possible that another transcript of these laws, including the Elizabethan translations, was prepared by Nowell for the press. As evidence of this possibility, one need look no further than the Canterbury transcript of Canute's laws (Canterbury Cathedral Library, MS Literary E.2), which is liberally smeared with printer's ink, and the three extant copies of Alfred's code which imply that Nowell was not averse to multiplying his transcripts for different purposes.

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Liebermann immediately responded to Sisam's challenge by announcing that he had considered (and rejected) the possibility of an Elizabethan forgery.¹⁰ He reasserted this position on textual grounds, and challenged Sisam to produce better evidence to counter the argument that Lambarde knew lost texts. He was also sceptical about Sisam's suggestion that any Elizabethan scholar was both competent and motivated enough to produce forgeries 'ohne eine Spur gewinnsüchtiger oder politischer Absicht'.¹¹ Sisam was not, however, convinced by Liebermann's reply, and he published his response in July 1925, justly claiming that Liebermann 'omitted to deal' with some of the most important evidence which had been raised in the review, and that as a result 'his alternative explanations are not clear'.¹² In this second paper Sisam strengthened his case considerably, effectively refuting Liebermann's criticisms, and suggesting that Lambarde's texts of *Að*, *Norðleod* and *Mircne* (which form a 'homogeneous group') were also Elizabethan translations and not authentic Old English texts.¹³ Had fortune not intervened on 7 October 1925,

¹⁰ Liebermann, 'Ist Lambardes Text der Gesetze Æthelstans neuzeitliche Fälschung?', p. 215.

¹¹ *Ibid.*

¹² Sisam, 'The authenticity of certain texts in Lambard's "Archaionomia" 1568', p. 253.

¹³ *Ibid.*, pp. 260 and 264-69.

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one might suppose that the debate would not have rested there. Perhaps it was the weight of Sisam's arguments which occupied Liebermann's mind on that day; in any event, his failure to see a car while crossing the road outside his home in Berlin led to his untimely death.¹⁴ Consequently, Sisam's arguments were never properly challenged by the man best equipped to defend his own edition. When the Nowell transcripts were 'rediscovered' in 1934, no attempt was made to explain their significance in the context of the earlier debate between Liebermann and Sisam, although, in one of the transcripts, Flower found similar examples of Elizabethan translation into Old English.¹⁵ Worse still, there has been a latent assumption since that time that Lambarde used no lost manuscripts, and that they were simply, as Sisam put it, 'ghosts' invented by Liebermann.¹⁶ This over-extends the scope of Sisam's objections; he intended only to raise doubts about two codes in the *Æthelstan* corpus and, while it may pay to use Liebermann's stemmata with caution, the extent of their inaccuracy will not be known until all the available evidence has been reassessed. This process has begun already, for in 1981

¹⁴ See Tout, 'Felix Liebermann (1851-1925)', p. 311.

¹⁵ Flower, 'Laurence Nowell and the discovery of England in Tudor times', p. 72, n. 16.

¹⁶ Sisam, 'A review of *The Laws of the Earliest English Kings*', p. 102. Cf. Ker, *Catalogue*, p. li.

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Roland Torkar published a fresh consideration of the code known as *Judex*, and re-opened the debate about Lambarde's sources with a general discussion centred on the evidence contained in Nw1 and Nw2.¹⁷ As Torkar pointed out, Liebermann was prone to 'stemmatische Überzüchtung';¹⁸ instead of offering his readers the evidence, and formulating all the alternative routes of stemmatic descent, he gave complete stemmata for each code with almost no discussion. This is a serious flaw, for many of the law-codes were copied in precisely the sort of 'homogeneous' groups noticed by Sisam when examining Að, *Norðleod* and *Mircne*, and any discussion of textual transmission should take account of the fact that scribes generally did not copy individual law-codes into collections.¹⁹ This also has implications for the textual transmission of *Alfred-Ine*, since two of the versions (in B and H) include the text of *Blaseras* as part of the code, and the Ot version of the *domboc* is followed

¹⁷ In his study, *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, Torkar claims to have shown: '... daß wenigstens in einem Falle (II und V As sowie *Judex*) Nowell Zugang zu einer seitdem spurlos verschwundenen Handschrift besaß, die im Falle II und V As als Quelle für Ld diente' (p. 5). Thanks to Torkar and Lutz (who edited the G-version of the *Chronicle*), the importance of Nw1 has now been recognized; but they did not know the transcript Nw4, nor does Torkar seem to have realized that *So* (Nw3) was made by Nowell and not Somner.

¹⁸ *Ibid.*, p. 124.

¹⁹ An example of this is provided by the groups of related text in B, H and Q, which (according to Liebermann) shared a common source. Cf. the comparative table above (Table 4, p. 69).

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immediately by a unique tract on the penalties for adultery (*Ymb æbricas*).

One may learn several methodological lessons from Liebermann's mistakes and Sisam's criticism. It is unsafe to make assumptions about the manuscript collections on the basis of the textual transmission of a single law-code, without first looking at the pattern of transmission for groups of codes in their manuscript contexts. Similarly, while it may be necessary to question many of the hypothetical lost stages in Liebermann's stemmata, one must also admit the possibility that other manuscripts could have existed in the sixteenth century, and have been used by the early antiquaries, even though they are no longer known. Finally, when discussing textual transmission, one must set out all the assumptions upon which judgements about the descent of texts may be formed. The consideration of a textual tradition as complex as that pertaining to *Alfred-Ine* necessarily involves a high degree of forensic deduction, and any errors of fact or logic can be fatal. One should therefore give all syllogisms before deducing a conclusion. The ruling principle of shared innovation/error must be applied; this will establish a close link between two manuscripts if the shared reading is a variant, and demonstrably not the original (or archetypal) text. The possibility of spontaneous scribal

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modernization or correction must also be considered, for such errors cannot be given the same weight as shared innovations. The balance between excluding on principle evidence that *might* be derived from the archetype, and avoiding prior assumptions about the relationship of the extant manuscripts to the original text, is a delicate one. It also unavoidably involves a degree of subjective assessment.

In order to make analysis of the textual transmission of *Alfred-Ine* as accessible as possible, it is proposed to divide the extant manuscripts into three separate groups: (1) the pre-Conquest manuscripts (and Nw1 which represents Ot); (2) the post-Conquest manuscripts; and (3) the Nowell transcripts. It should go without saying that in the present context this division is entirely arbitrary; there is no reason why manuscripts in different groups should not be related, and it will, of course, be necessary to study the correlation of manuscripts between groups simultaneously with any examination of the relationship of codices within a group. The textual evidence, upon which the arguments below are based, is set out in tabular form at appropriate points throughout the discussion. All of this information appears in the critical apparatus, and to avoid reproducing unnecessary and repetitive detail, only that information necessary to justify the arguments

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has been given. Generally, the following procedure has been adopted. Individual items in each list are numbered, and reference is made to these numbers in the discussion. References to page numbers in volume two are also given, thereby allowing one to cross-reference against the text and critical apparatus. Where appropriate, some illustrative examples are provided.

THE PRE-CONQUEST MANUSCRIPTS: E, G, Ot (Nw1)

(a) MSS E and Ot (Nw1)

That E is the oldest manuscript, preserving linguistic forms closest to those of the Alfredian period, has already been indicated.²⁰ Yet despite its chronological closeness to the archetype, it contains many flaws (see Table 7 below), the majority of which can be corrected by reference to other manuscripts of *Alfred-Ine*. Earlier editors of the law-code have traditionally supposed that in the eleventh century a copy of E was made. This copy, Ot, was badly burned in the Cotton fire of 1731, thereby impairing comparison with the oldest manuscript. Turk noted 'many points of resemblance' between the texts of *Alfred-Ine* in E and Ot, from which

²⁰ See above, pp. 25-27.

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he inferred a close textual relationship; and to strengthen this view further, he adduced as evidence the fact that both manuscripts contain versions of the *Anglo-Saxon Chronicle*, one of which (the G-version in Ot) was copied from the other (the A-version in E).²¹ Liebermann could add little to this. Like Turk he cited common variants in support of the close relationship between the E and Ot texts of *Alfred-Ine*, and he placed a heavy emphasis on the relationship between the two versions of the *Anglo-Saxon Chronicle*. Neither Turk nor Liebermann knew Nw1 (the transcript of Ot), and both recognized that the evidence available to them was insufficient to 'determine the question' with any certainty. The evidence provided by Ot itself might be summarized as follows. On two occasions where readings from Ot are legible, the following substantial discrepancies with E occur. Both are changes of word-order, revealing the later manuscript to have a poorer, and potentially derivative, text.

1. p. 3, note 23: wifmonnes E; monnes
wif Ot
2. p. 113, note a...a: 8onne cirican E;
deest [...]nne Ot

²¹ Turk, ed., *The Legal Code*, p. 20. By the time Turk published his edition in 1893, Plummer had shown that while 'the laws and lists [in Ot] were probably copied' from E, the version of the *Anglo-Saxon Chronicle* 'undoubtedly was'. See Plummer, ed., *Two of the Saxon Chronicles*, II, p. xxviii.

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On two further occasions, Ot and E agree against the readings of other manuscripts.

1. p. 117, note a...a: EOt lack 'æwum'
before swistær/sweos[...]
2. p. 205, note b...b: ne wille EOt; nylle
BHNw2

This is the sum total of the evidence provided by what remains of Ot. Nw1, however, provides further information relevant to a discussion of the relationship between E and Ot. The following table (Table 7) lists all the errors in E, which, in the opinion of this editor, warrant emendation. Although the single most important criterion in adducing a textual relationship is shared innovation (or shared error), these flaws in E can provide a standard against which to judge the other manuscripts. One must, however, be aware that errors in E could have originated with the scribe of that manuscript, and one must judge whether the readings of the other extant manuscripts are archetypal. Mathematical notation has been used to indicate textual relationships in the tables that follow. Agreement between two manuscripts (for example, E and Nw1) is indicated as 'E=Nw1'. Where a manuscript disagrees with E, but seems to improve upon it, a 'greater than' sign is used (for example 'Nw1>E'). Where E contains the better reading, this is signified as 'E>Nw1'.

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Those items noted by Liebermann as textual errors are marked with an asterisk (*); items considered by Torkar to be flawed are marked thus (#).²²

TABLE 7
EMENDATION OF THE OLDEST MANUSCRIPT (E)

Rubrics

list no.

1. [CVI] p. 11, note 26: E=Nw1 (*#)

Biblical Introduction

2. [19] p. 25, note 34: Nw1>E
3. [21] p. 29, note a...a: E=Nw1 (*)
4. [31] p. 35, note 11: Nw1>E
5. [49.3] p. 45, note a...a: E>Nw1
6. [49.5] p. 47, note 10: E=Nw1 (#)

²² See Liebermann, ed., *Gesetze*, III, p. 31, and Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, pp. 129-35.

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Law of Alfred

7. [1.2] p. 55, notes a...a: Nw1>E (*#)
8. [2.1] p. 59, note a...a: E=Nw1
9. [8] p. 69, note 28: E=Nw1
10. [11.4] p. 75, note 13: Nw1>E
11. [21] p. 87, note a...a: Nw1>E (*#)
12. [27] p. 95, note 9: E=Nw1 (*#)
13. [27] p. 95, note b...b: E=Nw1
14. [36.1] p. 103, note c...c: E=Nw1
(ge not erased in E)
15. [39.2] p. 109, note a...a: E=Nw1 (#)
16. [47] p. 121, note 31: Nw1>E
17. [52] p. 125, note 8: E=Nw1
18. [65] p. 131, note 31: Nw1>E (*#)
19. [70] p. 135, note 16: Nw1>E

Law of Ine

20. [13.1] p. 153, note 1: E=Nw1 (*#)
21. [17] p. 155, note 3: E=Nw1
22. [18] p. 155, note a...a: Nw1>E (#)
23. [26] p. 161, note 30: Nw1>E (*#)
24. [28] p. 163, note 9: E=Nw1
25. [37] p. 171, note 9: E=Nw1 (*#)

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- 26. [49] p. 181, note 22: E>Nw1
 - 27. [55] p. 187, note 38: E=Nw1 (*#)
 - 28. [59] p. 191, note 17: E=Nw1 (*#)
 - 29. [62] p. 193, notes 16, 20, 32: E=Nw1 (#)
 - 30. [70.1] p. 199, note 8: Nw1>E
 - 31. [74.2] p. 203, note 22: E=Nw1
-

In his discussion of this question, Roland Torkar wrote (of the items marked with a #):²³

Die folgenden Stellen sind - für sich betrachtet - nicht aussagekräftig für eine stemmatische Alternative, derzufolge Ot nicht in direkter Linie auf E zurückgeht; Ine Rb 9 und Ine 18, da Ot unabhängig von GH bzw. HB modernisiert haben könnte; Ine 26, da es sich um eine Verbesserung des Schreibers handeln kann, eventuell unter Einsichtnahme in die zugehörige Rubrik (Ine Rb 26 fundenes ENw); Af 21 und Af 65 schließlich waren unschwer aus dem Kontext zu ergänzen.

This assessment is compelling; it is probable that a competent scribe would correct his exemplar where it was obviously flawed, just as one might expect him to modernize its language as he copied. His assertion concerning Alf. 21 (list no. 11) is, perhaps, less convincing: the addition of the word 'him' at Alf. 21 certainly improves the sense of the clause, but if the scribe of Ot was correcting the text on his own initiative (independently of his exemplar), one might

²³ Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, p. 131.

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have expected him to realize that 'bohte' would be better rendered as 'brohte' (the reading of two other manuscripts: B and H). The following readings in Ot/Nw1 could be derived from the archetype, or they could be corrections made as a result of scribal initiative. Consequently, their diagnostic value is limited: list nos 2 (Bib. Int. 19, toð: teð E); 4 (Bib. Int. 31, he: se E); 16 (Alf. 47, ge: om. all except E); 18 (Alf. 65 gestrienan: om. E); 19 (Alf. 70 gehalre: gehaldre E); 22 (Ine 18, of: om. E); 23 (Ine 26 fundenes: fundes E); and 30 (Ine 70.1: Nw1 better form).

The most telling lacuna in E, which is not found in Nw1, occurs at Alf. 1.2 (list no. 7). This error in E seems to have occurred through homoeoteleuton, with the result that the scribe failed to copy all the words between 'gelæstanne' in Alf. 1.1, and the same word in Alf. 1.2. One might have supposed that the scribe of Ot filled this lacuna himself, were it not for the fact that all the other (*prima facie*) unrelated manuscripts fill it in an identical manner. Torkar has suggested that this passage would speak decisively against the possibility that Ot was copied from E:²⁴

²⁴ *Ibid.*

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...wenn sich zeigen ließe, daß der in Frage stehende Passus in Ot selbst voll integriert enthalten war - doch gerade dies läßt sich natürlich nicht zeigen.

He is correct to point out that this section of Ot no longer exists, although the missing words are fully integrated in the text of Nw1 (see f. 242r, lines 15-16). Torkar implied that the lacuna in E may have existed originally in Ot, and that, at a later date, the missing words could have been added from another manuscript in the margin or interlineally.²⁵ This presupposes that Nowell would have copied them into the body of his text, without indicating (or perhaps realizing) that they were a later addition to his exemplar. Torkar does not elaborate upon this possibility, although Nw1 provides pertinent evidence in this connection. On seven occasions words or letters were interlineated in Ot, but not in Nowell's transcript.

1. p. 3, note 3: 'hi'ora Ot; hiora Nw1
2. p. 3, note 17: twyhindum ('y' above i) Ot; twyhyndum Nw1
3. p. 5, note 4: 'ge[.]eoh[.]' Ot; gefeohte Nw1
4. p. 5, note 17: 'li[...]' Ot; li'o'ma Nw1
5. p. 5, note a...a: '[***]an' Ot; him man Nw1
6. p. 109, note 10: hun'd'nigonti[.] Ot; hundnigontig Nw1
7. p. 113, note 23: s'i'e Ot; sie Nw1

²⁵ In his forthcoming book, Patrick Wormald suggests that the words could have been added in a top or bottom margin. The evidence for this supposition is obtained by counting lines of continuous prose in different parts of Ot, and relating this to the corresponding parts of Nw1. For similar calculations based on the ratios of space used by Nowell to that of the Ot scribe, see *Ibid.*, p. 142 and Lutz, ed., *Die Version G der Angelsächsischen Chronik*, pp. xxxvi-xxxvii.

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One would not expect Nowell to have preserved these interlineations; even the most accurate Elizabethan copies do not attempt to reproduce the exact orthography of their original. Having said that, one must note that at several points throughout Nowell's transcript two different symbols are used, generally to indicate errors of word-order or omissions in Ot (/./ and ø).²⁶ It is probable that these were copied directly by Nowell from his exemplar, since on one occasion the identical mark is visible in Ot under ultra-violet light.²⁷ Thus, if the lacuna in E (at Alf. 1.2) had originally existed in Ot, but was subsequently corrected interlineally, one would not expect this to be apparent from Nowell's copy (judging from his usual practice with other Ot interlineations). On the other hand, if it was corrected by means of *signes de renvoi*, one would have expected Nowell to copy them into the transcript. There are, however, no instances of *signes de renvoi* being used in this section of the transcript to indicate marginal additions.

²⁶ These marks appear in the Nw1 version of *Alfred-Ine* on ff. 236v, 243r, 244r, 246r, 246v, 252r. The symbol 'ø' which appears on f. 246v is used again by Nowell on ff. 260v and 261v.

²⁷ For details, see the description of Nw1 above, p. 93.

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One is therefore faced with three possibilities. The first is that the Ot version of this code was not copied from E but from another codex which was so close to E that it shared many similar errors and lacunae, but at some places (most specifically Alf. 1.2) it improved upon E. If this is the case, then the stemma for these manuscripts would be as follows.

STEMMA: ALTERNATIVE 1

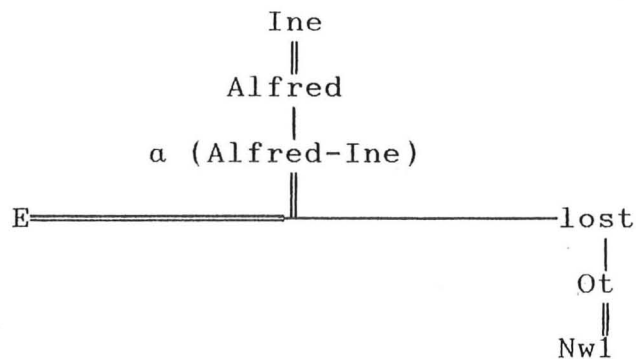
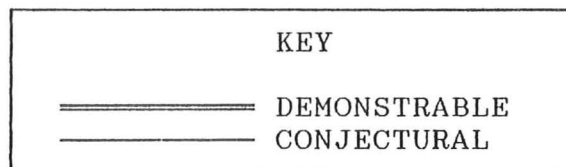


FIGURE 6



Given the other contents of Ot which were copied from E (the *Chronicle* and lists), this scenario seems rather

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One is therefore faced with three possibilities. The first is that the Ot version of this code was not copied from E but from another codex which was so close to E that it shared many similar errors and lacunae, but at some places (most specifically Alf. 1.2) it improved upon E. If this is the case, then the stemma for these manuscripts would be as follows.

STEMMA: ALTERNATIVE 1

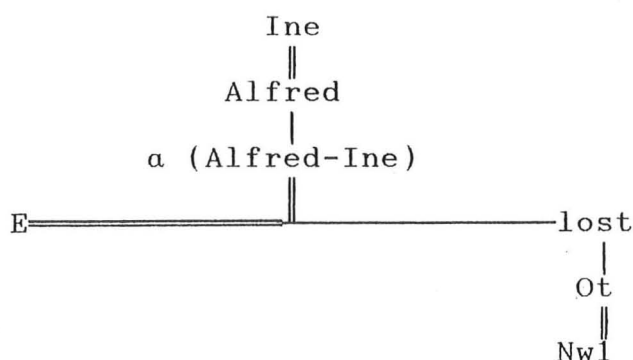
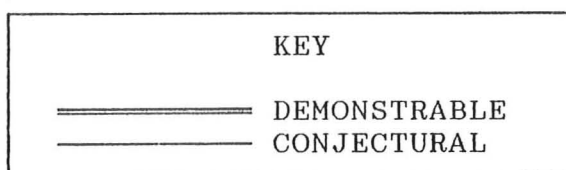


FIGURE 6



Given the other contents of Ot which were copied from E (the *Chronicle* and lists), this scenario seems rather

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improbable.²⁸ Two further possibilities exist. First, the manuscript could have been copied from two exemplars. This would have been a complicated process, and realistically one might expect other evidence of it (in the form of repetitions or further omissions caused by eye-skip); it cannot, however, be ruled out entirely. The final possibility is that Ot was copied from E, but corrected (less than comprehensively) using another more accurate version of the code, which has since been lost. This may have taken place either when the manuscript was written or at a later date. For both these scenarios the following stemma is applicable.

STEMMA: ALTERNATIVE 2

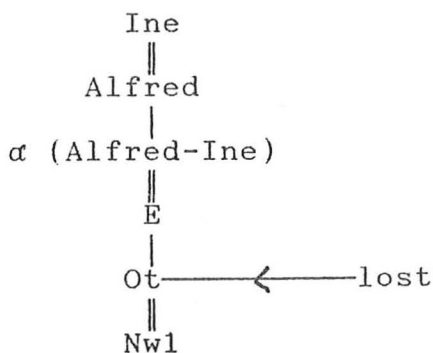


FIGURE 7

²⁸ Against this evidence for an independent Ot, one must consider the following agreements between E and Ot: (1) Rubric CVI - p. 11, n. 26; (2) *Alf.* 2.1 - p. 59, n. a...a; (3) *Alf.* 13 - p. 77, n. 14; (4) *Alf.* 19 - p. 83, n. 4; (5) *Alf.* 27, p. 95, n. b...b; (6) *Ine* 13.1 - p. 153, n. 1; (7) *Ine* 37 - p. 171, n. 9; (8) *Ine* 55 - p. 187, n. 38; (9) *Ine* 59 - p. 191, n. 17; (10) *Ine* 62 - p. 193, n. 16.

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One further complicating factor remains to be considered. At the end of the Nw1 version of *Alfred-Ine*, following immediately after the last clause of the Ine appendix, there occurs a short tract on the penalties for adultery (known as *Ymb æbricas*). In the transcript, this tract looks like a part of *Alfred-Ine*, although it begins with a large capital, comparable with (although slightly smaller than) that used to indicate the beginning of the *Burghal Hidage*. Unfortunately nothing of this text remains among the fragments of Ot, and so it is impossible to be sure about the layout of the original manuscript. Nowell was obviously not instantly sure of its relationship with the preceding matter, since he indicated in a marginal note that the text was not part of the Ine appendix. Similarly, when Wanley came to catalogue Ot in its unburned state, he failed to notice that the text was independent of *Alfred-Ine*, although he recognized both separate parts of the *Burghal Hidage*.²⁹ This tract was certainly not contained in E, and must therefore have been copied into Ot from another manuscript. If it was copied into Ot from an exemplar that included it as part of the text of *Alfred-Ine*, then E cannot have been the source for Ot. However one cannot know whether *Ymb æbricas* was copied into Ot together with *Alfred-Ine*, or if it was added subsequently for its

²⁹ Wanley, *Catalogus Historico-Criticus*, p. 219.

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relevant legal matter. Its existence obviously cannot be ignored, not least because one shall shortly argue for a close relationship between B and H, partly on the basis of another short tract (*Blaseras*) which is appended to the version of *Alfred-Ine* in those manuscripts.

The existence of a another manuscript of *Alfred-Ine* in the eleventh century, similar but not identical to E, is credible. It could be that this manuscript contained *Ymb æbricas*. Similarly, it is possible that this manuscript was the source for Ot. In order to carry the argument^{further}, one must then account for the shared error in E and Ot, by supposing that E and Ot's lost source shared a common exemplar. This is perhaps stretching the bounds of credibility. Nevertheless, the substitution in Ot of a better (albeit less than perfect) version of *Alfred-Ine*, in place of one with recognized flaws (E), requires only a slightly more vigorous exercise of the imagination than that required to explain the addition of *Ymb æbricas* to a collection otherwise derived primarily from a single manuscript. The trouble with this line of argument is that it constitutes precisely the sort of 'stemmatische Überzüchtung' for which Liebermann was criticized above.³⁰ Thus, rather than multiplying manuscripts 'willy-nilly', it is better to accept, with acknowledged uncertainty, the least convoluted solution:

³⁰ See above, pp. 123-24.

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namely that Ot was copied from E and subsequently corrected from a lost manuscript. The ultimate choice between these two alternatives remains a subjective one.

(b) MS G

The relationship of this manuscript to the others must be judged on the basis of its incomplete text. In his consideration of this codex, Turk wrote:³¹

The many agreements of Lamb [the *Archaionomia*] with G probably indicate only the use of G by Lambarde. Only a few are supported by H. The variations are not sufficient to put G out of the class to which the beforementioned Mss. belong. The scribe of G had an original not much different, we should judge, from E. He was somewhat careless, writing rather fast, and introduced often words of his own, still oftener a new word-order.

This opinion, that the close similarity between G and the text of the *Archaionomia* reveals no more than Lambarde's use of the manuscript in the preparation of his text, is much nearer the mark than Liebermann's alternative proposal.³² In his *Gesetze*, Liebermann extended the scope of the relationship between G and the *Archaionomia* considerably. Instead of accepting Turk's simple solution (namely that Lambarde used G), he created, with

³¹ Turk, ed., *The Legal Code*, p. 21.

³² It has been suggested already that Nowell collated his transcript of Nw1 with G (to the point where G ends), and that Lambarde probably used this transcript when preparing his edition. For details, see above, pp. 46-47.

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characteristic 'overcultivation', a convoluted pedigree in which three lost manuscripts (*l*, *ls*, and *gls*) are invented. To begin with, he dismissed summarily the textual evidence linking *G* with *H*.³³

Die wenigen gemeinschaftlichen Abweichungen vom Originaltexte in *G* und *H*, bzw. *H* cor [the corrected version of *H*], halte ich...für zufällig gleiche Willkürs *G*'s und *H*'s.

Next, he adduced an indirect textual relationship between *G* and the *editio princeps* on the basis of *Nw3* (*So*).³⁴

Das fragment *So* zeigt sich verwandt mit *G* und *Ld*. *G* ist nicht alleinige Quelle von *So* *Ld*.... *Hs*. *So* liest originaler als *G* *Ld* in *Af* *El* 21. Sehr häufig weicht sowohl *So* wie *Ld* einzeln vom archetypen Text ab; besonders haben beide je einen bibelkundigen Abschreiber 11. Jhs. benutzt, der es vorzog, statt *Ælfreds* Bearbeitung des Vulgatatextes zu kopieren, letzteren selbständig genauer zu übersetzen.... Es gab also eine *Hs. gls*, von der *G* und *ls* abhingen, und aus *ls* schöpften *Ld* und *So*.

The relationship between *Nw3* (*So*) and *G* will be examined in due course (when considering the three Nowell transcripts). Liebermann's contention that there existed a lost source for *G* and *ls* (the source of *l* and *So*) is without foundation. It has been demonstrated above that the *Archaionomia* was not derived from the hypothetical manuscript *l*. That *Nw3* (*So*) appears to be related to *Nw1* and *Nw2*, which was itself collated with (*inter alia*) *G*,

³³ Liebermann, ed., *Gesetze*, III, p. 31 (4). For his stemma, see above p. 116.

³⁴ *Ibid.*, III, p. 32 (12).

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speaks against the derivation of Nw3 from the lost manuscript *ls*. Without *ls*, there is no need to suppose the existence of *gls*, and again Liebermann's stemma falls apart at the seams. Having rejected his account of the textual transmission, one must therefore find a viable alternative.

The table below gives the more significant variants in G, contrasting them against the readings of the oldest manuscript.

TABLE 8
SIGNIFICANT VARIANTS IN COTTON NERO A.i (G)

Rubrics

list no.

1. [I] p. 1, note a...a: man him *GH* (him man *E*)
2. [IIII] p. 1, note 8: burhbryce *GH* (borgbryce *E*)
3. [LIII] p. 5, note a...a: man *G* (him *E*; hine man *H*;
him man *Nw1*)
4. [LXVI] p. 7, note 19: gestalige *G* (geneat stalige *E*)
5. [LXXVIII] p. 9, note a...a: he þæt mote *G* (þæt he
mote *E*; þæt he mott 'þæt' mid *H*)
6. [CI] p. 11, note b...b: mannes tale *G* (monnes stale *E*)
7. [CVI] p. 11, note 26: ceace *GH* (ceape *ENw1*)
8. [CXVIII] p. 13, note 17: peofwealh *G* (ȝeowwealh *E*)

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9. [11] p. 17, note b...b: habbe sylf *G* (self hæbbe *E*)
10. [11] p. 19, note a...a: æt ðas temples dura *G* (to
ðære dura þas temples *E*)
11. [12] p. 19, note 36: faran freo *GNw3* (freo *E*)
12. [13] p. 21, note c...c: hyne ymbe ne sierede *G*
(hine ne ymsyrede *E*)
13. [17] p. 25, note a...a: Gyf ðonne he idæges sie *G*
(Gif he ðonne sie idæges *E*)
14. [18] p. 25, note 25: getæcan *G* (gereccen *E*)
15. [20] p. 27, note 15: sylfe *G* (ilce *E*)
16. [21] p. 27, note a...a: þrim ær *G* (ær oððe ðrim *E*)
17. [21] p. 27, note 29: nyste gif he hit ðonne wiste *G*
(wisse *E*)
18. [21] p. 29, note a...a: se oxa sie *G* (se oxa *E*)
19. [28] p. 33, note 12: ga ladige *G* (geladige *E*)
20. [29] p. 33, note 47: witoman weotuman *G* (weotuman *E*)
21. [32] p. 35, note 16: of *G* (ofer *E*)
22. [34] p. 35, note 31: sceaððan *G* (sceððað *E*)
23. [43] p. 39, note a...a: Dem ðu swiðe rihte ⁊ swiðe
emne *G* (Dem ðu swiðe emne *E*)
24. [49.3] p. 45, note 6: wyrcað *G* (wyscað *E*)
25. [49.3] p. 45, note a...a: hefigran wisan budan *G*;
hefigran wisan budon *H* (hefigran *E*)
26. [49.3] p. 45, note 21: ða eallum *G* (eallum *E*)

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27. [49.5] p. 47, note 5: *pæt G (pæt ȝe E)*
28. [49.5] p. 47, note 6: *ȝeow G (ȝe eow E)*
29. [49.5] p. 47, note 10: *pæt is GH (pæt E)*
-

The variants in this table may be divided for convenience into three categories: (1) clear scribal errors or innovations; (2) those readings which do not agree with any of the extant manuscripts; and (3) those readings which agree with H. The first category includes list nos 3-6, 8-10, 12, 13, 16, 17, 19, 21, 22, 24, 26-28. Most of these are a result of word-order changes (5, 9, 12, 13, 16), a flaw which was apparently common in Ot to judge from the number of *signes de renvoi* in Nowell's transcript. Other variants occurred as the result of scribal misreading of letters (8, 19, 24, 28) and through eye-skip (4, 6). Some readings do not appear in any of the extant medieval manuscripts (list nos 3, 11, 14, 15, 17, 22, 23, 26); of these, list nos 11, 14 and 22 deserve special attention, since they appear to be 'genuine' variant readings in acceptable Old English, and may be more than mere scribal initiative. Category three includes list nos 1 (*man him GH: him man E*), 2 (*burhbryce GH: borgbryce E*), 7 (*ceace GH: ceape E*), 25 (*hefigran wisan budon/budan GH: hefigran E*), and 29 (*pæt is BH: pæt E*). This is perhaps the most interesting class of variants, as it could suggest that G was derived

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from a manuscript somehow related to H or its source; but one must also entertain the possibility that both manuscripts simply preserve 'correct' (archetypal) readings (list nos 2, 7, 29). This explanation will not account for list nos 1 and 25, nor does it necessarily explain list no. 7.

This editor finds that he cannot concur with Liebermann's view that the similarities between G and H are mere 'identical arbitrary accidents'.³⁵ The ruling principle of shared innovation/error must be applied here, and this suggests that while list no. 1 could be an 'accident', other variants common to G and H are not merely coincidental. Both manuscripts contain the error in Rubric IIII ('burhbryce' for 'borgbryce'), as well as the reference to ordeal at Rubric CVI ('ceace' for 'ceape'). Furthermore, both add missing words, perhaps as a result of common scribal innovation, at Bib. Int. 49.3 (list no. 25). Since G is older than H, the former cannot have been copied from the latter, and because relatively little of G has survived, it is impossible to be sure of the precise relationship (if any) between G and the *hb* tradition (discussed below). There is certainly insufficient evidence to support a direct link between the two codices; for this reason G and *hb* are only linked tentatively in the stemma.

³⁵ Liebermann, ed., *Gesetze*, III, p. 31 (4). Quoted above on p. 140.

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THE POST-CONQUEST MANUSCRIPTS: B, Bu, H

(c) MSS B and H

In their editions, Turk and Liebermann found that B and H preserve similar texts of *Alfred-Ine*, and both editors explained these affinities by supposing the existence of a common (lost) source, which Liebermann called *hb*.³⁶ The textual evidence for this conviction (given below) is complemented by the fact that both manuscripts include *Blaseras* immediately after the *Ine* appendix; indeed in H it is included as a part of the code, and is numbered CXXI in the list of rubrics. Also, both manuscripts contain comparable 'homogeneous groups' of texts, which appear to be related.³⁷ A complete record of readings from these two manuscripts is given in the appendix to this dissertation (volume two); the following table provides only a selection of the more important variants. Slight linguistic variations between the two manuscripts (i/y, o/a etc.) have been regularized in the list below.

³⁶ See Turk, ed., *The Legal Code*, pp. 21-23, and Liebermann, ed., *Gesetze*, III, p. 31 (5-7).

³⁷ Cf. above, Table 4, p. 69 and p. 123.

TABLE 9
SELECTION OF SIGNIFICANT VARIANTS IN B AND H

Law of Alfred

list no.

1. [8] p. 69, note 28: nunnan *BH* (munuc *E*)
2. [21] p. 87, note a...a: him hames brohte *BH* (him hames bohte *E*)
3. [22] p. 87, note 30: angildes and fo to ȝam wite *H* (om. *EB*)
4. [25] p. 91, note 3: change of clause order in *H*
5. [27] p. 95, notes 8-9: gif 'he' *BH* (gif *E*)
6. [27] p. 95, note b...b: '7' for ȝriddan dæl *B*; ȝriddan dæl ȝa gegyldan for ȝriddan dæl *H* (om. *E*)
7. [34] p. 99, note b...b: nimen ȝa men up *H* (up om. *EB*)
8. [37.1] p. 105, note 21: healf 'ȝam' *BH* ('ȝam' om. *E*)
9. [39.2] p. 109, note a...a: arise be (bæ *B*) ȝære cyrliscan bote twelfhyndum men twyfealdlice *BH* (om. *E*)
10. [47] p. 121, note 31: scillinga *BH* (scillinga ge *E*)
11. [64.1] p. 131, note 6: ta sy *B*; ta sy ofaslāgen *H* (ta *E*)
12. [65] p. 131, note b...b: to ȝan swiȝe gewundod *B*; to ȝan swiȝe 'ge'wund'ed' *H* (to ȝam swiȝe wund *E*)
13. [65] p. 131, note 31: begytan *B*; gestrienan *H* (om. *E*)

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14. [68] p. 133, note 35: gewundad *B*; 'ge'wund'od' *H*
(wund *E*)
15. [70] p. 135, note 16: gehaldre *BH* (gehalre *E*)
16. [70] p. 135, notes 17, 23 etc: gesylle *BH*
(geselle *E*)

Law of Ine

17. [3.1] p. 143, note 33: 'hyde oððe hydgyldes'
('hydgyld[...]' *H*) *BH* (*hyde E*)
18. [3.2] p. 143, note 39: oððe ·lx· scillinga ⁊ preost
twyscildig (preost 'si' *B*) *BH* (om. *E*)
19. [11] p. 151, note 25: '⁊ wið Godd deoplice bete' *B*
(om. *EH*)
20. [15.2] p. 153, note 33: geswicne ('ge' *H*) *BH*
(swicne *E*)
21. [23] p. 159, note 7: dælas þæs *B*; dæl'as þæs' *H*
(dæl *E*)
22. [26] p. 161, note 30: fundenes *BH* (fundes *E*)
23. [37] p. 171, note 9: ceace *BH* (ceape *E*)
24. [42] p. 175, note 15: gebeten *BH* (gebete *E*)
25. [53] p. 185, note 18: swa hweðer swa *BH* (swa *E*)
26. [55] p. 187, note 38: feowertyne *B*; ·xiii· *H*
(·xii· *E*)
27. [62] p. 193, notes 16, 20, 32: ceace *BH* (ceape *E*)
28. [75] p. 205, note b...b: nylle *B*; nylle 'þæs
ceapes' *H* (ne wille *E*)

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14. [68] p. 133, note 35: gewundad *B*; 'ge'wund'od' *H*
(wund *E*)
15. [70] p. 135, note 16: gehaldre *BH* (gehalre *E*)
16. [70] p. 135, notes 17, 23 etc: gesylle *BH*
(geselle *E*)

Law of Ine

17. [3.1] p. 143, note 33: 'hyde oððe hydgyldes'
('hydgyld[...]' *H*) *BH* (*hyde E*)
18. [3.2] p. 143, note 39: oððe ·lx· scillinga ⁊ preost
twyschildig (preost 'si' *B*) *BH* (om. *E*)
19. [11] p. 151, note 25: '⁊ wið Godd deoplice bete' *B*
(om. *EH*)
20. [15.2] p. 153, note 33: geswicne ('ge' *H*) *BH*
(swicne *E*)
21. [23] p. 159, note 7: dælas þæs *B*; dæl'as þæs' *H*
(dæl *E*)
22. [26] p. 161, note 30: fundenes *BH* (fundes *E*)
23. [37] p. 171, note 9: ceace *BH* (ceape *E*)
24. [42] p. 175, note 15: gebeten *BH* (gebete *E*)
25. [53] p. 185, note 18: swa hweðer swa *BH* (swa *E*)
26. [55] p. 187, note 38: feowertyne *B*; ·xiiii· *H*
(·xii· *E*)
27. [62] p. 193, notes 16, 20, 32: ceace *BH* (ceape *E*)
28. [75] p. 205, note b...b: nylle *B*; nylle 'þæs
ceapes' *H* (ne wille *E*)

THE TEXTUAL TRANSMISSION

This table reveals certain discrepancies between B and H; on six occasions (list nos 3, 6, 7, 11, 18, 28), H adds words not included in B, and on one occasion (list no. 19) B adds material not in H. Two of these instances (list nos 19 and 28), which are interlineated, could be the result of scribal initiative. These additions do not in themselves speak against the possibility of a common source; indeed list nos 1, 2, 9, 12, 15, 18, 21-27 either provide the archetypal reading or evidence of shared innovation. In this connection, one other matter must be considered, namely the corrections made to H by either the main scribe or a near-contemporary.³⁸ These corrections, which Liebermann called 'Hcor', account for some of the similarities between B and H listed above (list nos 12, 14, 17, 20, 21); and, according to Liebermann, 'H's Korrektor (Hcor) muss hb benutzt haben [laut der Modernisierungen]'. He also asserted that:³⁹

...Stammverwandtschaft erhellt durch
zahlreiche Fehler, die H und Hcor mit B
teilen. Sie zwingt zur Annahme einer
verlorenen Hs. hb'.

Having acknowledged this, one must examine the other evidence indicating the existence of a common source. List nos 1, 9, 10, 15, 22, 23, 24, 26 and 27 may all embody the archetypal text, although the existence of

³⁸ On these corrections, see above, pp. 74-75.

³⁹ Liebermann, *Gesetze*, III, p. 31 (5-6).

THE TEXTUAL TRANSMISSION

these readings in this tradition alone is suggestive of a direct relationship between the manuscripts. Many of the other discrepancies between B and H could have originated with scribal error or omission in B; eye-skip in particular is common throughout this manuscript. Liebermann proposed another explanation that one must also admit, namely that:⁴⁰

...hb über der Zeile oder am Rande modernisierende Varianten bot, so dass H, H cor. [the corrections in H] und B bald die eine, bald die andere Lesart aufnehmen konnten.

This is possible, but perhaps unlikely: if such additional 'modernisierende Varianten' had existed, one imagines that more of the material unique to H would have been copied into B. The likelihood of spontaneous scribal correction must also be considered: list nos 5, 7, 28. It is the opinion of this editor that list nos 2, 8, 16 and 25 were not caused by independent scribal initiative. Thus, while firm evidence for the existence of 'hb' is limited, the circumstantial evidence is compelling. The stemma for these manuscripts is given after a consideration of Bu (below, p. 152).

⁴⁰ Liebermann, ed., *Gesetze*, III, p. 31 (7).

THE TEXTUAL TRANSMISSION

(d) MS Bu

According to Turk, Bu 'stands not very far from E'; and Liebermann saw in its language traces of Kentish.⁴¹ Yet the surviving fragment of Bu contains a remarkable number of variants for such a short extract (see volume two, pp. 142-60, for a complete list). Below is a table of its more significant variants.

TABLE 10
SIGNIFICANT VARIANTS IN Bu

Law of Ine

list no.

1. [1.1] p. 143, note 2: bebeodað *EBu* (beodað *BH*)
2. [2] p. 143, note 10: nyhtum *Bu* (nihta *EB*; nihtum *H*)
3. [2] p. 143, note 12: gefullod *BuH* (gefulwad *E*)
4. [2.1] p. 143, note 18: fulwihte *EBu* (fulluhte *BH*)
5. [3] p. 143, note 27: freoh *BuH* (frioh *E*)
6. [3.2] p. 143, note 39: om. *EBu* (oððe ·lx· scillinga
7 preost twyscildig *BH*)
7. [5] p. 145, note 16: om. *BuH* (he *EB*)
8. [5] p. 145, note 18: gearne *Bu* (geierne *E*; geyrne
BHNw1)
9. [5.1] p. 145, note 28: swingelle *EBu* (swingle *BH*)

⁴¹ Liebermann, ed., *Gesetze*, I, p. xx. See, for example, list no. 8 (*gearne*).

THE TEXTUAL TRANSMISSION

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TABLE 10
SIGNIFICANT VARIANTS IN Bu

Law of Ine

list no.

1. [1.1] p. 143, note 2: bebeodað EBu (beodað BH)
2. [2] p. 143, note 10: nyhtum Bu (nihta EB; nihtum H)
3. [2] p. 143, note 12: gefullod BuH (gefulwad E)
4. [2.1] p. 143, note 18: fulwihte EBu (fulluhte BH)
5. [3] p. 143, note 27: freoh BuH (frioh E)
6. [3.2] p. 143, note 39: om. EBu (oððe ·lx· scillinga
7 preost twyscildig BH)
7. [5] p. 145, note 16: om. BuH (he EB)
8. [5] p. 145, note 18: gearne Bu (geierne E; geyrne
BHNw1)
9. [5.1] p. 145, note 28: swingelle EBu (swingle BH)

⁴¹ Liebermann, ed., *Gesetze*, I, p. xx. See, for example, list no. 8 (*gearne*).

THE TEXTUAL TRANSMISSION

10. [8] p. 149, note 26: mid ·xxx Bu (·xxx· EBH)
 11. [11] p. 151, note 18: bebycgge Bu (bebycgge E)
 12. [23] p. 159, note 6: twadne EBu (twegen BH)
-

Of the eleven instances given above, five agree with E and three agree with H. Of the readings that agree with extant manuscripts, possible spontaneous modernizations include list nos 1, 3, 5, 9, 12. List nos 8 and 10 are unique to Bu, but lack diagnostic significance for the same reason; list nos 2 and 7 may be coincidental errors. Not one variant provides clear evidence of shared innovation; and, as Liebermann pointed out, it seems impossible that Bu was derived from *hb*, whether directly or indirectly. The additional phrase at Ine 3.2 is missing from Bu (list no. 6), and the word-forms used on two occasions agree with E (against B and H): list nos 4 and 12. Liebermann also maintained that 'Ine 18 steht Bu näher zu E als zu hb'.⁴²

In the stemma below, Bu is accorded the status of a wholly independent version of *Alfred-Ine*. This may not be an accurate reflection of its textual history; but, due largely to its incomplete state, it is impossible to link it with any of the other surviving manuscripts.

⁴² *Ibid.*, III, p. 31 (8).

THE TEXTUAL TRANSMISSION

STEMMA 3

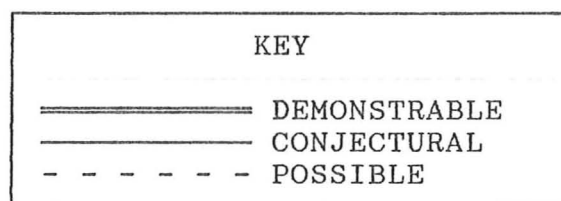
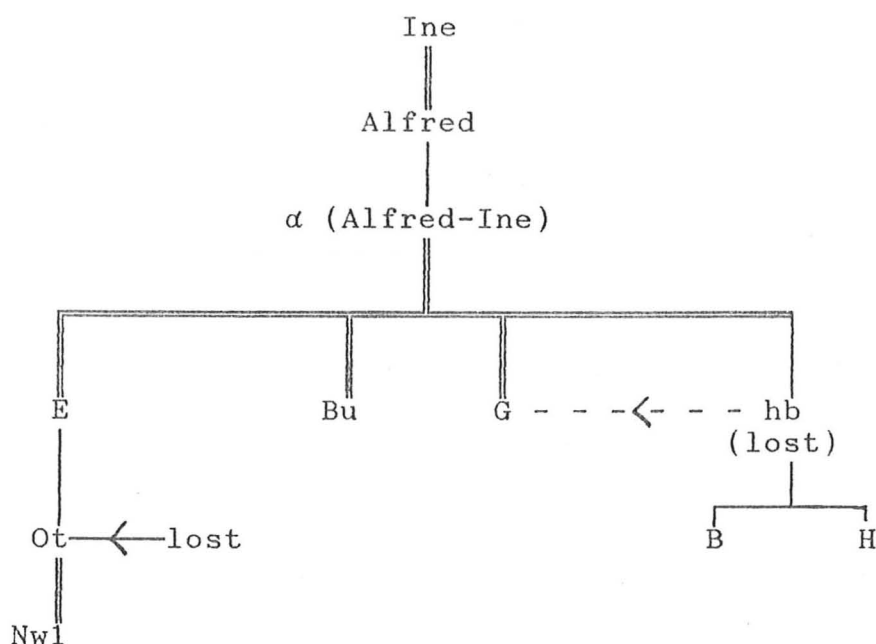


FIGURE 8

Certain features of this stemma may require explanation. There is no doubt that Ine's code was composed before that of Alfred. Yet, in the next chapter, it will be argued on internal grounds that Alfred may not have issued the two codes as one text. The question of who was responsible for this conflation, and when it occurred, is (to some extent) an open one. Alfred may have envisaged that Ine's code should retain an overall validity without

THE TEXTUAL TRANSMISSION

STEMMA 3

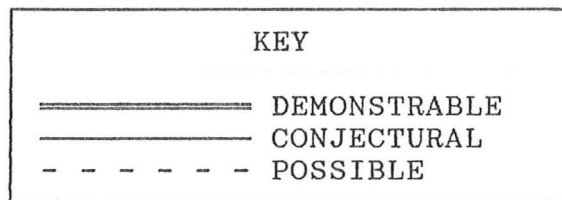
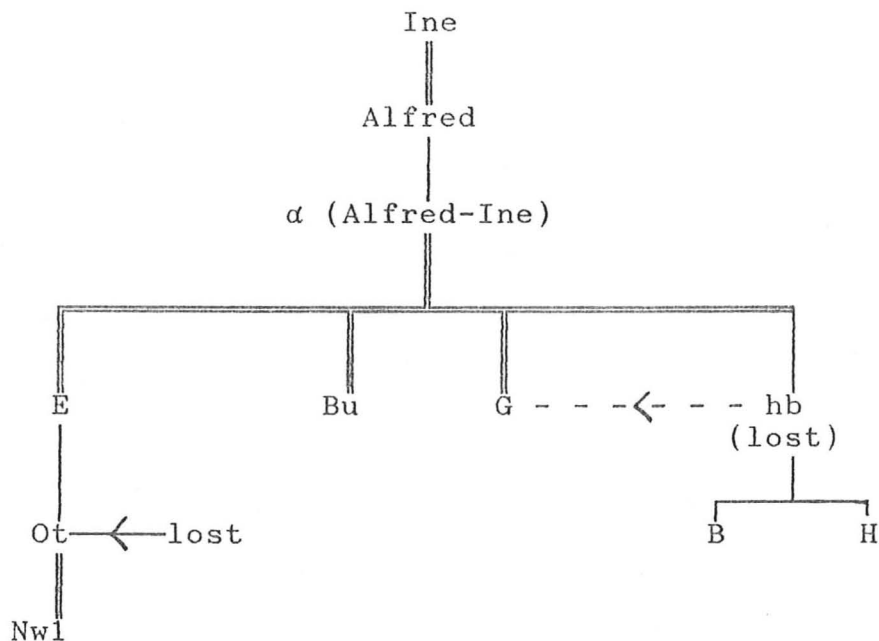


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THE TEXTUAL TRANSMISSION

actually appending it, and the law-book may owe its present state not to Alfred himself but to his immediate heirs. Since it is the conjoined *Alfred-Ine* which has survived, this is given as the archetype; however, the possible existence of a separate Alfredian law, without the *Ine* appendix, is also allowed.

The relationship between E and Ot depicted above indicates the possibility considered by this editor to be the more likely. The evidence discussed above suggests that *hb* was a recension entirely separate from E. G may be related to this tradition, but since it is incomplete (with neither Alfred's law nor the *Ine* appendix surviving), the relationship must be expressed tentatively. To place *Quadripartitus* in this stemma will require further detailed analysis, both of the various textual traditions of the Latin collection, and of its relationship to the vernacular manuscripts. These questions certainly need reconsideration, but they are best reserved as the subject of separate research. Thus, the matter of Liebermann's *hbq*, and its relationship to the conjectural manuscripts *hb* and *q* (the source of *Quadripartitus*), has not been considered here.

THE TEXTUAL TRANSMISSION

THE NOWELL TRANSCRIPTS (Nw1, Nw2, Nw3, Nw4)

Introduction

The final matter to be considered is the relationship between the Nowell transcripts. To a certain extent the opinions offered below are preliminary, since the rediscovery of one of these manuscripts (Nw4) was only made public recently.⁴³ Furthermore, although these are all the known transcripts of *Alfred-Ine* by Laurence Nowell, there are several other books and manuscripts containing relevant matter in the United States.⁴⁴ This author has not seen any of the material now residing on the opposite side of the Atlantic, except indirectly (through copies and notes made by other scholars, including Professor Berkhout). It is to be hoped that this deficiency will be rectified in due course.

⁴³ This author has spent a considerable amount of time tracing the books and manuscripts belonging to William Lambarde, which were dispersed in batches from the Lambarde family library at the beginning of this century. This research continues, but has already yielded fruit. The realization that Nw3 was not by William Somner but by Laurence Nowell was made independently by this author and by Professor Carl Berkhout, who has been conducting a similar investigation for some time. It was Professor Berkhout who identified Nw4, and announced his discovery at a conference on 'The Editing of Old English Texts', held in the University of Manchester on 25-27 May, 1990.

⁴⁴ There is an annotated copy of the *Archaionomia* in the Huntington Library, which was signed in 1568 by William Lambarde (using his 'Saxon' signature), and which is heavily annotated and corrected by him. Other relevant transcripts by Nowell containing legal material are Huntington Library, MS HM 26341 (the *Decreta Willelmi Bastardi* and the *Leges Edwardi quas Willelmus postea confirmavit*) and University of California, Los Angeles, Research Library, MS 170/529 (a commonplace book by Nowell containing an almost complete transcript of *Quadripartitus*).

THE TEXTUAL TRANSMISSION

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(e) MS Nw1 (with Nw2)

There is no doubt that Nw1 is a copy of Ot in its pre-1731 unburned state, and that it was made by Laurence Nowell in the house of Sir William Cecil in 1562.⁴⁵ It has also been ascertained that Nw1 contains a second stratum of textual variants, known as Nw2, which consists of readings copied from other manuscripts with which Nowell collated his transcript of this code. The source of Nw2 variants as far as the bottom of f. 241r was primarily G; that the G version of *Alfred-Ine* terminated (then as now) at that point is indicated in the transcript by a hand-pointer drawn in the left-hand margin. This circumstantial evidence can be verified textually. The items marked with an asterisk in the following table should be accorded particular attention, since the readings in G are unique to that manuscript. This provides positive proof of shared innovation/error.

TABLE 11
G AND Nw2: PROOF OF COLLATION BY NOWELL

Rubrics

list no.

1. [XXVII] p. 3, note 23: wifmannes G; 'wif monnes' Nw2
2. [LXXXII] p. 9, note 30: rih't'gesamhiwon G;
geriht'ge'samhiwan ('ge' Nw2)

⁴⁵ For details, see the description of Nw1 in the previous chapter, esp. pp. 84-86.

THE TEXTUAL TRANSMISSION

Biblical Introduction

3. [11] p. 17, note 23: swilce *G*; sw'i'lce *Nw2*
- 4.* [12] p. 19, note 36: faran freo *G*; 'faran' freo *Nw2*
5. [13] p. 23, note 2: hwa *G*; 'hwa' *Nw2*
6. [18] p. 25, note 18: ceaste *G*; ceast'e' *Nw2*
7. [18] p. 25, note 25: getæcan *G*; 'getæcan' *Nw2*
8. [20] p. 27, note 4: ðeowenne *G*; þeowen'n'e *Nw2*
- 9.* [21] p. 27, note 29: nyste gif he hit ðonne
wiste *G*; 'nyste gif he hit ðonne wiste' *Nw2*
10. [21] p. 29, note 3: ðeowne mennenn *G*; 'þeowne
al.' *Nw2*
11. [21] p. 29, note a...a: se oxa sie *G*; se oxa
sie' *Nw2*
12. [23] p. 29, note 22: wiste *G*; wis't'e *Nw2*
- 13.* [28] p. 33, note 19: cwicu *G*; 'cwicu' *Nw2*
14. [28] p. 33, note 29: getrywe *G*; 'getrywe' *Nw2*
15. [35] p. 37, note 2: borge *G*; 'g' above borh *Nw2*
16. [35] p. 37, note a...a: niedling gehyne *G*; 'nid'ling
'ne gehine' *Nw2*
17. [41] p. 39, note 17: on þæs *G*; 'on' þæs *Nw2*
- 18.* [43] p. 39, note a...a: Dem ðu swiðe rihte 7 swiðe
emne *G*; 'Deme ðu swiðe rihte 7 swiðe emne' *Nw2*
19. [43] p. 39, note 31: oðerne *G*; op'e'r'ne' *Nw2*
20. [43] p. 39, note 33, 38: oðerne *G*; oper'ne' *Nw2*

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- 21.* [49.3] p. 45, note a...a: hefigran wisan budan G;
hefigran 'wisan budon' Nw2
22. [49.5] p. 47, note 5: ȝe om. GNw2
23. [49.5] p. 47, note 10: pæt is G; pæt 'is' Nw2
-

This table does not account for all of the Nw2 variant readings to f. 241r, nor does it explain those readings after f. 241r which must have come from another source (since G was incomplete when Nowell used it). Many of the remaining variants in Nw2 cannot be explained by reference to any of the known vernacular manuscripts; some resemble H, but it has been established in the previous chapter that Nowell probably did not know that manuscript, and Lambarde did not see it until after the publication of the *Archaionomia* in 1568. The sources with which Nowell collated his transcript are therefore a mystery. The following table (Table 12) gives some of the more important collations in BL, MS Additional 43703 (Nw2). Those variants which could be derived from H are marked with an asterisk; those which agree with B alone are marked with two asterisks. Interlineations in Nw2 are not indicated in the following list; this detail is given in the critical apparatus. The notation 'Nw1+Nw2' indicates that the text of Nw1 has been corrected by Nw2. Discrepancies in the rubrics are also indicated below.

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TABLE 12
Nw2 VARIANTS (A SELECTION)

Rubrics

list no.

1. [VII] p. 1, note 11: *cirene Nw2 (circan E)*
2. [XII] p. 1, note 20: *ciorliscre Nw2 (cirliscre E)*
3. [XLV] p. 5, note 18: *peowena Nw2 (þeowa E)*
4. [LXII] p. 7, note 9: *ciorliscum Nw2 (cirliscum E)*
5. [LXXV] p. 11, note 12: *forwitie Nw2 (forsitte E)*

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6. [21] p. 27, note 22: *ofweorpod Nw2 (ofworpod E)*
7. [21] p. 27, note 31: *Nw1+Nw2 (inne ENw2; hine Nw1)*
- 8.* [25] p. 31, note 15: *Nw1+Nw2 (Gif ENw2; Gif he Nw1)*
- 9.* [27] p. 31, note 35: *Nw1+Nw2 (ðæt ENw2; ðæt ðæt Nw1)*
10. [31] p. 35, note 9: *Nw1+Nw2 (netene ENw2; nietene Nw1)*
11. [34] p. 35, note 32: *ge hi Nw2 (ge EGNw13)*
12. [41] p. 39, note 14: *geclefs Nw2 (geclysp E)*
13. [49.3] p. 45, note 18: *hie he Nw2 (hie E)*
- 14.* [49.7] p. 49, note 46: *Nw1+Nw2 (bebead ENw2; bead Nw1)*
- 15.* [49.9] p. 51, note 22: *Nw1+Nw2 (7 ENw2; om. Nw1)*
- 16.* [49.9] p. 51, note a...a: *Nw1+Nw2*

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Law of Alfred

- 17.* [5.5] p. 65, note a...a: punresdæg ENw2; dæg...punres
Nw1
18. [8.2] p. 71, note 8: þenne Nw2 (ðe E)
19. [10] p. 73, note 10: rubric abbreviated Nw2
- 20.* [12] p. 75, note 37: fela E; feola B; monig H; monig
Nw2
- 21.* [13] p. 77, note 6: Nw1+Nw2 (ungewealdes ENw2;
ungeweardes Nw1)
22. [19] p. 83, note 1: rubric abbreviated Nw2
23. [20] p. 85, note 25: leofnesse Nw2 (lefnesse E)
- 24.* [22] p. 87, note 30: angylde EBNw1; angildes and fo
to ðam wite H; angylde 7 fo to þam wite Nw2
- 25.* [23.2] p. 89, note 21: dolgbote ENw1; dolhbote BHNw2
- 26.* [27] p. 95, notes 8-9: gif ENw1; gif he BHNw2
27. [27] p. 95, note 12: hie Nw2 (ða E)
- 28.* [27] p. 95, note b...b: om. ENw1; 7 for ðriddan dæl
B; ðriddan dæl ða gegyldan for ðriddan ðæl H; þriddan
dæl þa gegildan for þriddan dæle Nw2
29. [32] p. 97, note a...a: gerest Nw2 (geresp E)
- 30.* [33] p. 97, note 21: Nw1+Nw2 (godborges ENw2;
godborh'e'es Nw1)
- 31.* [34] p. 99, note b...b: EBNw1: nimen ða men up H;
nimen up ða men (men up in margin) Nw2
- 32.* [36.1] p. 103, note b...b: Nw1+Nw2 (=BH)

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- 33.* [36.1] p. 103, note c...c: sy preofingre ufor *H*; sie
ufor pryfingre *Nw2*
34. [39.2] p. 109, note a...a: arise seo bote etc. *Nw2*
35. [40] p. 109, note 7: additional rubric in *BNw2Q*
36. [40] p. 109, note 18: eoder *Nw2* (edor *E*)
37. [40.2] p. 111, note a...a: haligrift *Nw2* (halig
ryht *E*)
38. [42] p. 111, note 30 (rubric)
- 39.* [42.1] p. 113, note 8: *Nw1+Nw2* (inne *ENw2*; hine *Nw1*)
40. [42.5] p. 115, note 29: orwite *Nw2* (orwige *E*)
- 41.* [42.7] p. 117, note a...a: æwumborenre *H*; æwumborenre
Nw2
42. [44] p. 119, note 22 (rubric)
43. [47] p. 121, note 28: mennes *Nw2* (men *EBHNw1*)
- 44.* [56.1] p. 125, note a...a: to bote *ENw2*; om. *BNw1*
- 45.* [73] p. 137, note a...a: *Nw1+Nw2* (sculdru *ENw2*; pas
culdru *Nw1*)

Law of Ine

46. [8] p. 149, note 21: hæbben *Nw2* (abiddan *EBHNw1*)
47. [11] p. 151, note 14 (rubric)
48. [13.1] p. 153, note 1: (rubric)
49. [17] p. 155, note 3: gedyrned *Nw2* (gedyrneð *EBNw1*)
- 50.* [30] p. 165, note 16 (cf. *BHNw2*)
51. [35] p. 167, note 36: uncorene aþ *Nw2* (unceases aþ
EBNw1)

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- 52.** [35.1] p. 169, note 5 oðswaren EH: ætsworen B;
ætswaren Nw2
53. [37] p. 171, note 1 (rubric)
- 54.* [39] p. 173, note a...a (cf. BHNw2)
55. [43.1] p. 177, note 13: Nw1+Nw2 monega ENw2; monga Nw1
56. [43.1] p. 177, note 27: ælc opinor (æsc ENw1)
57. [47] p. 181, note 3: Nw1+Nw2 mon ENw2; om. Nw1
- 58.* [49.3] p. 183, note 3: abesne alias (æfesne ENw1;
æbesne BH)
59. [51] p. 183, note 24 (rubric)
- 60.* [52] p. 183, note 39 (cf. BHNw2)
61. [52] p. 183, note b...b: para gepungenra alias Nw2
(geþingea E)
- 62.** [53] p. 185, note 7: oðcwolen EHNw1; acwolen B;
acwolen Nw2
63. [53.1] p. 185, note 39: unbeceappanne Nw2
(unbeceasne E)
- 64.* [55] p. 187, note 38: (cf. BHNw2)
- 65.* [57] p. 189, note 30 (cf. BHNw2)
66. [58] p. 191, note 1 (rubric)
67. [59.1] p. 191, note 24 (rubric)
68. [62] p. 191, note 31 (rubric)
69. [62] p. 193, note 20: ceace Nw2
70. [64] p. 195, note 19 (rubric)
71. [65] p. 195, note 26 (rubric)

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- 72. [67] p. 197, note 1 (rubric)
 - 73. [73] p. 201, note 12 (rubric)
 - 74. [74] p. 201, note 21 (rubric)
 - 75.* [75] p. 205, note b...b (cf. *BHNw2*)
-

It appears from this table that Nowell was correcting *Nw1* by reference to another manuscript (list nos 7-10, 14-16, 21, 30, 32, 41, 45, 55, 57). Using the principle of shared innovation, one may deduce from those readings which may have emanated from either B or H (marked above) that the manuscript source of *Nw2* could be related to the *hb* tradition (list nos 20, 24-25, 31-33, 41, 52, 58, 60, 62, 64-65, 75). Of these, list nos 26, 28, 31, 32-33, 41 and 64 could be archetypal readings. On the other hand, one could argue that Nowell would not have misunderstood *Ine* 43.1 (list no. 56: *ælc* for *æsc*) if he had seen B (*eax*) or H (*æx*). Some of these variants could also have arisen as a result of translation by Nowell from the Latin of *Quadripartitus*; in the light of Sisam's arguments rehearsed above, this possibility cannot be ignored.⁴⁶ For example, the additional phrase at *Alf.* 27 (list no. 28), which occurs in both H and *Nw2*, also occurs in the Latin *Quadripartitus* (Q): 'reddat ipsa terciam partem compositionis, terciam congildones eius, pro tercia parte fugiat'. Similarly, at *Alf.* 36.1 the

⁴⁶ See above, pp. 117-24.

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additional word 'preofingre/pryfingre', which occurs in H and Nw2, is represented in Q ('altius tribus digitibus'). The best example of a possible translation into Old English from Q occurs at Alf. 40.2 (list no. 37). Both the independent recensions (ENw1 and BH) have the words 'halig ryht'. In the margin, Nw2 reads 'alias halig rift butan rihte alecge, .i. sanctum uelum sine recto deponat' (f. 246v). Nw3 reads 'halig ryht', and Nw4 'halig ryht' with 'rift al.' written in the margin. Q has 'sanctum uelum', and this is obviously the source of Nw2's marginal annotation. In the *Archaionomia* (ff. 38v-39r) Lambarde printed 'haligrift', translating it as 'uelum sacrosanctum', meaning 'altar-covering'. The fact that the word 'haligrift' occurs only in Nowell's transcripts and Q is suggestive of a direct textual relationship. That it does not occur in any of the medieval copies of the law increases the probability that Nowell translated this word from the Latin in *Quadripartitus*; and Lambarde's use of the word in his *Archaionomia* further suggests that he edited from Nowell's transcripts. Other examples of influence from Q may include list nos 27 ('ipsa'), 34 ('seo bote' = 'emendatio'), 46 ('habere'), and 51 (by extrapolation). Nowell's collations with Q probably amount to no more than the antiquary's attempts to decipher particular words in the Old English text. *Quadripartitus* was an obvious source of information

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about the language, and one should not overlook the fact that Nowell was the first scholar to compile an Anglo-Saxon dictionary (now Oxford, Bodleian Library, ^{MS} Selden _A supra 63).

Most of the Nw2 variants appear to be in good Old English, and the correlation between many of the readings and H cannot, in the opinion of this editor, be merely coincidental. Even the additions at *Alf.* 27 (list no. 28) and *Alf.* 36.1 (list no. 31) do not look like retroversions, not least because of their close correlation with H. Several of the variants close to H are particularly worthy of regard, since they do not appear in B (list nos 24, 28, 31, 33, 41). On the other hand, two variants which only occur in B also appear in Nw2 (list nos 52 and 62). Torkar suggested that Nowell may have had access to B in its complete state, and while the physical evidence of Lambarde's annotations supports this argument, the textual evidence provides no way of confirming or denying this possibility.⁴⁷ In any case, Torkar's suggestion would not account for those readings in Nw2 which agree with H but not with B. As Nowell did not know H, one must conclude, on the balance of probabilities, that he had access to a lost vernacular

⁴⁷ Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, p. 134. On the evidence suggesting that the manuscript was more complete when Lambarde saw it, see above pp. 62-63.

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manuscript which preserved readings unique to both B and H. Readings pertinent to the consideration of a lost manuscript are list nos 12, 29, 61 and 63; other *lectiones difficiliores*, which seem barely deducible from Q but which resemble extant manuscripts (especially B and H), are list nos 5, 16, 18, 20, 24, 32, 34, 52, 60, 62, 65). One must, however, acknowledge that Nowell was prone to wholesale retroversion from *Quadripartitus*. It will be impossible to draw any final conclusions about his sources until a detailed study of all the extant Lambarde and Nowell transcripts, commonplace books and the like is undertaken.

(f) MSS Nw3 and Nw4

Although preserving different parts of *Alfred-Ine*, these transcripts may be considered together since both appear to be related textually to Nw1 and Nw2. In purpose and execution they differ considerably. Nw3 is a working copy, written on paper, and contains a large number of errors (and corrections). These were commonly caused by eye-skip, the misreading of letters, and omission of the terminal 'e'. Several of these flaws are listed in the table below (list nos 2, 3, 6, 16). Nw4 is a handsome presentation copy, written on parchment, and is largely accurate. Nw3 is fragmentary, while Nw4 seems deliberately to contain only Alfred's code without the

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Ine appendix or the Biblical Introduction. In the Huntington Library copy of the *Archaionomia*, which was signed and annotated by Lambarde, the following note occurs in the margin (on f. 26r):

Note that some copies doe begynne heare,
Leaving out all the former preface.

This annotation occurs at precisely the point where Nw4 begins (Bib. Int 49.9), and one must wonder whether Lambarde was thinking of this transcript when he wrote the annotation. Certainly there are no other versions of *Alfred-Ine* extant which begin at this point, and the textual evidence (set out below) does not support the opinion that Nw4 was copied from another lost manuscript. In the following list, agreement between the transcripts is indicated as 'Nw1=Nw3'; where one transcript improves upon another, this is signified as 'Nw3>Nw1'.

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TABLE 13
COMPARISON OF Nw1-Nw4

Biblical Introduction

list no.

1. [4] p. 15, note b...b: om. Nw3
2. [9] p. 17, note 8: Nw3 error (mid unryhte E: mid unriht Nw1; mid unriht mid unriht Nw3)
3. [11] p. 17, note 23: Nw3 error (swelce E: sw'i'lce Nw2; hwilce Nw3)
4. [11] p. 19, note b...b: om. Nw3
5. [12] p. 19, note 36: Nw2=Nw3
6. [18] p. 25, note 25: error Nw3 (getæcan Nw2; betæcan Nw3)
7. [21] p. 27, note 22: Nw2=Nw3 (not Nw1)
- 8.* [24] p. 29, note 38: Nw3>Nw1
9. [35] p. 37, a...a: Nw2=Nw3
10. [41] p. 39, note 14: Nw2=Nw3
11. [43] p. 39, note a...a: note similarities
12. [43] p. 39, note 32: Nw2=Nw3
13. [49.9] p. 51, note 42: Nw1=Nw3 (H=Nw4)

Law of Alfred

14. [1]-[1.2] p. 55, notes 3-6, 12-22, 24-27:
Nw1=Nw3=Nw4
15. [1.4]-[1.7] p. 57, notes 1, 3-17: Nw1=Nw3=Nw4
16. [4] p. 61, note 1: Nw1=Nw4; Nw3 error

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17. [5.2] p. 63, notes 43, 45: $BH=Nw1=Nw3=Nw4$ (not E)
18. [5.5] p. 65, note a...a: $Nw2=Nw3$
19. [8] p. 69, note 28: $munuc\ Nw1=Nw4$; $mynecenne\ Nw3$
($BH\ nunnan$)
20. [9] p. 71, note a...a: $mid\ bearn\ ofslea$
 $Nw1=Nw3=Nw4$; $ofslea\ mid\ bearn\ H$
21. [10] p. 73, note 10: note similarities
22. [16] p. 79, note a...a: $Nw1, Nw3, Nw4$ different
23. [18] p. 79, note 26: $Nw2, Nw3, Nw4$ different
24. [21] p. 87, note 8: $Nw1=Nw3=Nw4$
25. [22] p. 87, note 30: $Nw2=Nw3=Nw4$
26. [27] p. 95, note 1: $Nw4$ unique rubric
27. [27] p. 95, note b...b: note similarities
28. [34] p. 99, note b...b: $Nw2=Nw3=Nw4$
29. [36.1] p. 103, note b...b: $H=Nw2=Nw3=Nw4$
30. [36.1] p. 103, note c...c: $Nw2=Nw3=Nw4$
31. [39.2] p. 109, note a...a: $Nw2=Nw4$ (not $Nw1$)
32. [52] p. 125, note 8: $H=Nw2=Nw4$ (not $Nw1$)
33. [56.1] p. 125, note a...a: $H=Nw2=Nw4$ (not $Nw1$)
34. [70] p. 135, note 16: $H=Nw1=Nw4$

Law of Ine

35. [54]-[54.1] p. 187, notes 9-16: $Nw1=Nw3$
36. [55] p. 187, note 38: $H=Nw3$ (not $Nw1$)
37. [56] p. 189, note 1: $Nw2=Nw3$
38. [62] p. 193, note n. 16: $ceape\ E=Nw1=Nw3$ (ceace BH)

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- 39. [62] p. 193, note 20: ceace $H=Nw2=Nw3$ (ceape $E=Nw1$)
 - 40. [62] p. 193, note 32: ceape $E=Nw1=Nw3$ (ceace BH)
 - 41. [62] p. 195, notes 1-2, 4-11: $Nw1=Nw3$
 - 42. [65]-[66] p. 195, notes 26, 31: $Nw2=Nw3$
 - 43. [70] p. 197, note 31: $Nw2=Nw3$
 - 44. [71] p. 199, note 25: $Nw2=Nw3$
 - 45. [75] p. 205, note b...b: ne wille $E=Nw1=Nw3$;
nylle/nille $BH=Nw2$
-

The many agreements between $Nw1$, $Nw3$ and $Nw4$ suggest that these transcripts are all related (list nos 11, 14, 15, 20, 24, 38, 40, 41). Both $Nw3$ and $Nw4$ incorporate readings from $Nw2$ (or its source); this suggests that they were written with reference to $Nw1$ after $Nw2$ had been added (list nos 5, 7, 9, 10, 12, 18, 25, 27-33, 37, 39, 42-44). Of these, list nos 27, 31, 33, 36 and 39 are particularly significant, since $Nw3$ and $Nw4$ contain shared innovations with $Nw2$, and not with the original text of $Nw1$. On several other occasions there would be agreement between $Nw2$ or $Nw4$ and $Nw3$, but for a mistake or an orthographical variant in $Nw3$. This is the least accurate of all the transcripts, and conveys an impression of having been written in haste, without great attention to accuracy (see, for example, list nos 16 and 19). On some occasions (list nos 13 and 21), $Nw1$ will agree with $Nw3$, while $Nw4$ agrees with $Nw2$ or one of the

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other surviving manuscripts. There is no reason to suppose that Nw4 was written with direct reference to Nw3, or vice versa; indeed the errors in Nw3 speak against this possibility. On rare occasions, none of the transcripts agrees with another (list nos 22-23). Thus, one may conclude that while Nw3 and Nw4 are important testimony of the Nowell/Lambarde working method, they are by no means evidence of further lost manuscripts. The case for the latter rests on Nw2 alone.

STEMMA 4

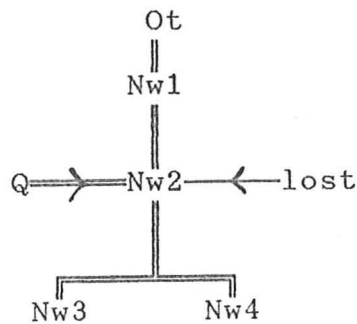


FIGURE 9

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COMPLETE STEMMA FOR ALFRED-INE

The following stemma includes all the manuscripts discussed above. It can be seen that there are two main lines of descent from the archetype: that represented by E; and that represented by *hb*. The source of *hb* is unknown. It could have been the archetype, although this is impossible to prove. If Ot is not a direct copy of E, then it is possible that its source was somehow related to *hb*. As already indicated, the relationship of *Quadripartitus* to the extant vernacular manuscripts of this law-code lies beyond the scope of this dissertation. Nevertheless, as the source of several readings in Nw2, it warrants a place in the following stemma.

Liebermann suggested that the archetype of this code originated at Canterbury, and that many of the variants occurred contemporaneously when the code was copied for circulation.⁴⁸

Die Varianten der Hss., alle auf Einen nicht originalen Archetyp zurückgehend, sind also nicht etwa verschuldet durch die Abweichungen, die zwischen den gleichzeitig um 893 an der Königskanzlei für verschiedene Empfänger hergestellten Ausfertigungen bestanden haben mögen. Unseren Archetyp besass und versah mit Rubriken wahrscheinlich der Dom zu Canterbury.

⁴⁸ Liebermann, ed., *Gesetze*, III, p. 32 (15).

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Although this involves a subjective judgement, Liebermann's position was tenable when the Winchester connections of E and Ot remained unrecognized. It now seems unlikely that the archetype originated in Canterbury, and the evidence is not sufficient to attribute it to any other location.

STEMMA 5

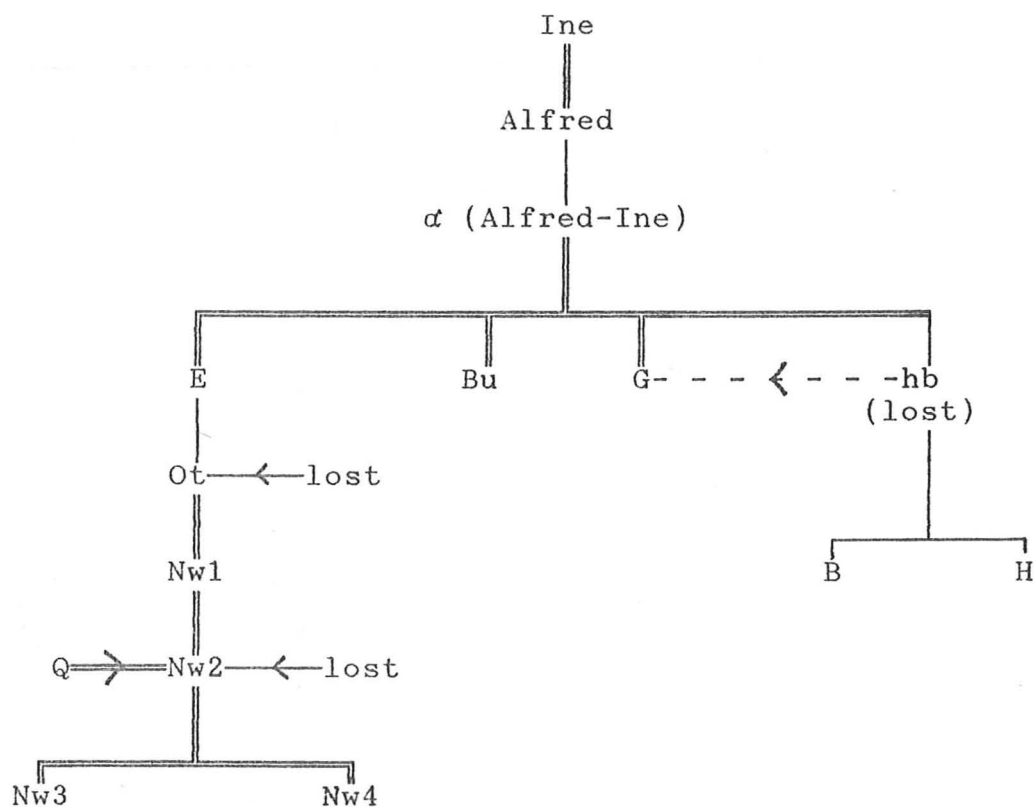


FIGURE 10

KEY	
=====	DEMONSTRABLE
-----	CONJECTURAL
- - - - -	POSSIBLE

CHAPTER THREE. THE STRUCTURE OF THE LAW-CODE

INTRODUCTION

The law-code of King Alfred the Great, as it has been preserved for posterity, is made up of four component parts. The first is a list of 120 rubrics or chapter-headings. The second is a lengthy introduction translating portions of the Bible, particularly from the Book of Exodus. The third is a seemingly complete code of law attributed to King Alfred, which is linked to the Biblical Introduction by a prologue describing the manner of its promulgation; and the fourth is another apparently complete code ascribed to King Ine (688-726).¹ Although this four-fold division is the most convenient and established way to refer to the different parts of the code, it is also potentially misleading; for when the code is thus divided, one is tempted to forget that it has been transmitted as a single entity. On the other hand, such a division is suggested by the code itself, but upon close inspection it is revealed that these four parts do not form a particularly coherent whole. The precise ramifications of this structure have never been stressed adequately, and consequently a certain amount of imprecision has occurred in the use of the code as

¹ Ine's law-code was promulgated during the episcopacy of Eorcenwald, Bishop of London (d. 30 April 693). This provides a *terminus ad quem* for the code; the *terminus a quo* is the year of Ine's accession (688). Ine's code is therefore two centuries older than that of Alfred.

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historical evidence. It is the Ine appendix which has suffered most in this respect, since it has been treated both as an integral part of Alfred's law-code, and as the first extant West Saxon law. Although these two propositions are not necessarily mutually exclusive, only the second should be regarded as indubitable.

With the exception of Canute's codification, compiled by Archbishop Wulfstan of York in the eleventh century, Alfred's law-code is the most substantial statute to survive from Anglo-Saxon England. It is also the single most important code of law issued before the reign of King Edgar (959-75); but to a certain extent this position of primacy appears to have been usurped by the bipartite piece of legislation known as *II-III Edg.*, which was used by Wulfstan as a structural model for his codification, known as *I-II Cnut*.² Alfred's code was certainly a potent authority throughout the tenth century. As already mentioned, it came to be known as *seo domboc*, and was cited using this appellation in the

² *II-III Edg.* was the first Anglo-Saxon law-code explicitly to partition ecclesiastical and secular provisions within the one ordinance. During the troubled reign of Æthelred the Unready, Archbishop Wulfstan recalled with nostalgia the comparatively trouble-free reign of Edgar. When he became Canute's advisor, he actively promoted Edgar as the archetypal Christian king. See, for example, Canute's letter of 1020, *cap. 13* (*Gesetze*, I, p. 274) and the *Institutes of Polity*, *cap. 95* (Jost, ed., *Institutes*, p. 81).

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laws of Alfred's successors.³ By the time that *II-III Edg.* was issued (according to Liebermann 959x62),⁴ the *domboc* certainly existed in the form in which we have it; but this is not necessarily surprising, given that the promulgation of *II Edg.* postdates the earliest extant manuscript of the code (E).⁵ One cannot tell precisely when Ine's code was annexed to that of Alfred. The textual transmission (discussed in the previous chapter) suggests that the law-code existed in its surviving form from very early in its history, because both recensions (E and BH) contain the rubrics and the Ine appendix. It is pure speculation to suppose the existence of another stage in the textual history beyond this, where Alfred's code and the Ine appendix were not conjoined. Yet the

³ It is curious, and perhaps significant, that Alfred's name is never mentioned expressly in connection with the *domboc*. The first reference usually regarded as an allusion to Alfred's law-code (most recently by the editors of the *Toronto Dictionary of Old English*) mentions *ƿære dombec*: see I *Edw.* pro. This could be construed as a specific reference to the composite code *Alfred-Ine*; alternatively it could be a formulaic reference to written law generally, comparable with Charlemagne's insistence that '*iudices* are to judge justly and in accordance with the written law' (Keynes, 'Royal government and the written word', pp. 227-29). Cf. above, p. 2, n. 4).

⁴ Liebermann, ed., *Gesetze*, III, p. 134 (8).

⁵ *II Edg.* 3 refers to the rendering of church-tax (*ciricsceat*) 'be pam fullan wite þe seo *domboc* tæcð' ('under the full fine which the *domboc* directs'), a reference to *Ine* 4. *II Edg.* 5 concerns the keeping of the sabbath, and again it refers to the penalty stated in the *domboc* ('be pam fullan wite ƿe seo *domboc* tæce'), a reference to *Ine* 3.

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extant manuscripts will only allow one to go back so far when tracing the history of the code, and the only way to go beyond the oldest manuscript (c. 950) is by an analysis of the text itself.

Having made this position plain, there is no harm in assuming for argument's sake the possibility that Alfred's code and the Biblical Introduction could have been composed as an independent work, before the addition of the rubrics and Ine appendix.⁶ There are good internal grounds for this supposition, and while the textual transmission may speak against this scenario, it does not rule it out completely. This may account for some of the peculiarities exhibited by the code in its present state (namely the ineffective rubrics, and the contradictions between some of Alfred's laws and those contained in the Ine appendix).

As editors of medieval material, and especially those working with vernacular English texts, are frequently reminded, transmission and composition are not necessarily distinct processes. The relationship between a scribe and the text which he copied was a dynamic one:

⁶ The citation of the *domboc* at II *Edw.* 5.2 may provide a *terminus a quo* for the joining of Alfred's code to that of Ine; but the reference is ambiguous, and could refer either to *Alf.* 4 or to *Ine* 30. While logic may dictate that the *domboc* referred to by Edward the Elder is the same *domboc* cited by Edgar, there is nothing to preclude the possibility that Edward, not Alfred, was responsible for the present form of the law-book. For details, see below pp. 265-67.

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texts changed during the process of transmission, sometimes deliberately, but more often as a result of carelessness or ignorance on the part of the copyist. The manuscripts of King Alfred's law-code might be said to bear the marks of both these varieties of scribal interference. Not only is the oldest manuscript corrupt in several places, but it is one of the peculiar characteristics of *Alfred-Ine* that the code gathered accretions during its transmission.⁷ For instance, the text which Liebermann called *Blaseras* occurs as chapter CXXI of *Alfred-Ine* in both B and H, while Nw1 suggests that there was no clear distinction in Ot between the end of the Ine code and the beginning of an eight line legal tract unique to the transcript.⁸

One should not assume blithely that Alfred was responsible for the form of the *domboc* simply because the law-code's four-part structure occurs in the oldest manuscript. This has been the prevailing tendency, not least because E traditionally has been connected with

⁷ One is not immediately aware of this from examining the text in Liebermann's edition (*Gesetze*, I, pp. 16-123), since his classification of texts is applied so rigidly as to obscure the form of the codes in their manuscript contexts. On this, and other related issues, see the appendix, pp. 329-39.

⁸ This text (*Ymb æbricas*), which has been lost from Ot, was printed by Flower from Nw1 (see 'The Text of the Burghal Hidage'). Having made the transcript, Nowell subsequently realized that *Ymb æbricas* was distinct from *Alfred-Ine*, and he separated them by a line, adding the marginal annotation 'finis legum Ina'.

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Alfred himself.⁹ It is true that this division is supported (to a greater or lesser extent) by all but one of the other manuscripts, but against this consideration one must weigh the fact that the next oldest manuscript to have survived after E_A was written almost three-quarters of a century later, during the reign of Æthelred (Ot). It is probably derived from E, and may even be related to the other recension of the code (represented by B and H). There are certainly sufficient contradictions and redundancies within *Alfred-Ine* to justify a detailed examination of each of the four sections individually. Before doing so, it would be as well to describe the aims and limitations of such an analysis.

This chapter is not an attempt to question the status of the *domboc* as it was known to Edgar in the late tenth century. There is no question that the text of *Alfred-Ine* used by Edgar is comparable with that which has been transmitted to us. That the code was used after Alfred commissioned it is evidence of its importance, and this is reflected by the near-contemporary description of it as *seo dumboc*. One of the principal aims of any legal historian must be to reconstruct the

⁹ The first 'booklet' (ff. 1-16) of E, which contains a genealogical regnal list of the House of Wessex up to Alfred, and the 'common' stock of the *Anglo-Saxon Chronicles* (annals from 60 B.C. to 891), was written either in Alfred's lifetime or within years of his death. 'Booklet' three (ff. 33-52), which contains *Alfred-Ine*, was written in the mid-tenth century (about fifty years after Alfred's death). For further detail, see above, pp. 25-36.

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chronological development of law throughout a given period, and in order to do this one must define clearly the sources of that law. In the past, the temptation of those dealing with the Ine appendix has been to 'have one's cake and eat it': the Ine code has been used as evidence of law in seventh-century Wessex, while at the same time it has been regarded as an integral (and operative) part of King Alfred's compilation. One must therefore stress that Ine's law-code (as a separate legal document) is lost; all that survives is a code which purports to have been issued by Ine, forming seventy-seven of the 120 rubrics of Alfred's law-code.¹⁰ One must also decide whether we are dealing with two codes or one; in other words, did Alfred modify the Ine material before adding it to his code, or did he leave it unchanged? Is there evidence to suggest that he used Ine's law-code in the composition of that part of the *domboc* bearing his name, before the appendix was added? Indeed is there any evidence to prove categorically that Alfred himself was responsible for annexing the Ine law, or could its addition to the text of Alfred's code be the work of his immediate successors? It may be impossible to answer all

¹⁰ Turk was the first editor to emphasize that 'of Ine's Laws, independent of E.'s [Alfred's] code, there is no more trace than Offa's' (*The Legal Code of Ælfred the Great*, p. 42). He did not, however, examine the status of Ine code in any detail, since he was content to see its inclusion in the codification as a deliberate act, bearing 'testimony to the greatness' of King Alfred (p. 48).

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of these questions decisively; nevertheless, these are the issues which must be addressed before any analysis of the substantive law can take place. When dealing with the Anglo-Saxon laws, one soon realizes that it is dangerous to take anything for granted, especially since misconceptions about the material have been transmitted, both consciously and unconsciously, from edition to edition.¹¹ Questioning the authenticity of the rubrics is particularly important, for if they are an original part of Alfred's code, it follows that the Ine appendix (which is rubricated) will also be integral to the code as Alfred issued it. If, however, they are a later addition to the code, then the possibility must be admitted that other material was also added after the code's composition. The problems caused by the contradictions between Alfred's code and the Ine appendix will, of course, evaporate if the two were not originally issued in physical conjunction. This obviously has wide reaching implications, and one must balance the evidence of the manuscripts against that of the text itself.

¹¹ Cf. the appendix below, pp. 329-31 and 339-44.

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THE RUBRICS

When turning to any one of the complete versions of King Alfred's law-code in its manuscript context, one discovers that the ordinance does not begin, like most of the other extant Anglo-Saxon royal laws, with a prologue giving details about its promulgation; rather it is introduced by a numbered table of rubrics.¹² These rubrics have the appearance of being integral to the code, in the sense that they link together the other three parts of the work (the Biblical Introduction and the two law-codes). Appearances can, however, be deceptive, and when one compares the rubrics with the text which they purport to rubricate, one soon discovers that they actually sit somewhat uneasily with the code as a whole. Whether one regards them as a summary of the contents of the code, or simply as a list designed to allow easy referencing, the list of chapter-headings is perplexing, largely because it does not seem to fulfil either of these roles with great success.

¹² The rubric list occurs in four out of six manuscripts of *Alfred-Ine* (excluding the Nowell transcripts). Its sometime existence in Bu can be inferred from the bifolium which survives, because rubric numbers are written above the text. In H there are 121 rubrics. The text of B is also rubricated, although the careless scribe of that manuscript left space for headings on several occasions but forgot to add them. The rubrics in B frequently differ from the list contained in the oldest manuscript, and it is clear that an attempt was made to improve upon the originals. The twelfth-century Latin translation of the Anglo-Saxon laws, *Quadripartitus*, is more heavily rubricated than the vernacular versions, and again there is evidence to suggest a less than successful attempt to improve upon the established rubrics.

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The problems begin with the very first rubric, which does not refer, as one might expect, to the clause that Alfred calls first (*Alf. 1*: 'Æt ærestan we lærað þæt mæst ðearf is...') - it is rubricated with the second *capitulum* - but rather to one of the concluding clauses of the Biblical Introduction (*Bib. Int. 48.6*). This clause is generally regarded as a quotation from the Gospel of St Matthew of the 'golden rule', which the rubric expresses in the negative: '...mon ne scyle oprum deman, buton swa he wille þæt him mon deme'.¹³ *Bib. Int. 49.6* certainly serves an important thematic function in the Biblical Introduction, since it forges a link between the citation of the Old Testament law of Moses and the New Law represented by Christ, who said (we are told) 'ðæt he ne come no ðas bebodu to breccanne ne to forbeodanne, ac mid eallum godum to ecanne' (*Bib. Int. 49*: 'that by no means did he come to break nor to forbid these commands, on the contrary with all good <things> to add to them'). This belief is fundamental to the Christian understanding of God's new covenant with his people, and is a deliberate endorsement of the Old Testament commandments set out in the Book of

¹³ Cf. Matthew 7:1-2, 12. While not denying the similarity, Turk suggested that this could be 'a very ancient interpretation of the Acts (15: vv. 20 and 29) found in Greek and several ancient versions, being as old as the second century'. See Turk, ed., *The Legal Code*, pp. 37-38.

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Exodus. Indeed Turk confers upon this clause an even greater significance, stating that the verses from Matthew embody 'the spirit of all law and justice'.¹⁴

This particular excerpt could be regarded as providing an apposite heading to the code, especially in a society where private retribution, in the form of the blood-feud, was not yet extinct. On the other hand, this chapter is not given any particular prominence in the Biblical Introduction itself; the natural emphasis seems to fall on the following two clauses (Bib. Int. 49.7 and 49.8), which extend the history of Christian law-giving into the period after the conversion of the English. These clauses not only provide an ostensible reason for secular law-making in Anglo-Saxon England; they also justify the imposition of monetary penalties by secular lords, which is the central characteristic of all the Germanic legal systems, and is mentioned by Tacitus in the *Germania* (cap. XII). Furthermore, this recognition of a continuous and developing history of law-giving could be viewed as deliberately distancing Alfred's laws from the harsh paradigm of Mosaic injunction, which was applicable as an ideal, but was tempered for Christian society by a merciful God, incarnate in his Son.

¹⁴ *Ibid.*, p. 32.

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Only one clause of the Biblical Introduction was rubricated: Bib. Int. 49.6. The remaining rubrics all refer to particular clauses of substantive law in the Alfred code and Ine appendix. Yet, as one reads through the list, one finds further grounds to wonder about its purpose. If it was primarily intended to be functional, whether for general reference purposes or as a summary of the contents, then one might expect a rubric for every major clause of law, but this is not the case. Similarly, one might expect a close similarity between the subject-matter and vocabulary of the text and that of the appropriate rubric, whereas in fact the rubrics are frequently ambiguous or obscure, and they regularly adopt an entirely different phraseology from that used in the text itself. In one instance, the rubric ('XXVIII: Be swa gerades monnes slege') repeats the wording of the text almost verbatim ('Gif mon swa geradne mon ofslea...'), although the text itself refers to a previous clause about kinless men, which is not rubricated. As a result, rubric ·XXVIII· on its own is unintelligible, and one is forced to turn to the corresponding clause in the text, or rather the clauses preceding it, to make any sense of the rubric. This could be regarded as undermining the practical utility of the rubric list, for even as a general indication of contents, this chapter-heading is both ambiguous and

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unhelpful. Perhaps more importantly, rubric ·XXVIII· also implicitly denies the possibility that the rubric-list was composed before the text, as a type of plan for the contents of the code, since its phraseology presupposes the existence of the clause to which it refers.

The table of rubrics incorporates several different types of error and peculiarity, of which rubric ·XXVIII· provides just one example. In order to illustrate fully the extent of this problem, it is necessary to examine these imperfections in detail. The most obvious category of error, caused by the artificial division of the code into 120 chapters, is an erratic rubrication of the text. Not every deserving chapter has a rubric, nor is a new subject always introduced by a chapter-heading. This flaw occurs with curious regularity; indeed each of the following clauses introduces new subject-matter, but none of them is rubricated.¹⁵

Alf. 5.5, 9.1, 13, 16, 17, 18.1, 27, 40,
40.2, 42.4, 42.5, 48 etc.; *Ine* 13.1, 15.1,
15.2, 23.3, 24.2, 35.1, 44.1, 46.2, 49.3,
54.2, 59.1, 70.1.

Three examples should suffice to indicate the nature of this error. Rubric ·X· ('Be bearneacnum wife ofslægenum')

¹⁵ This list differs somewhat from that given by Liebermann (*Gesetze*, III, p. 40). It omits his reference to *Alf.* 2.2 (since there is no such clause in his edition), and it adds *Alf.* 9.2, *Alf.* 19.3, and *Alf.* 42.5.

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refers to *Alf.* 9 of the text. *Alf.* 9 prescribes the compensation payable for both the victim and her child when a pregnant woman is slain. Although expressed rather ambiguously, *Alf.* 9.1 is not a continuation of *Alf.* 9 (despite Schmid's misleading numeration); it introduces new matter relating to the ratio between 'wite' (fine) and 'angild' (compensation).¹⁶ *Alf.* 9.2, which prescribes a single fine for theft and amends the previously disparate fines payable for 'goldðeofe ⁊ stodðeofe ⁊ beoðeofe' ('the thief of gold, and the thief of stud-horses, and the thief of bees'), is therefore a continuation of *Alf.* 9.1, which also concerns 'wite'. Yet the rubrication of these chapters is highly misleading, since neither *Alf.* 9.1 nor *Alf.* 9.2 has a chapter-heading. Another example of a similar problem occurs at *Ine* 13.1. In this instance, the manuscripts differ in their positioning of the rubric: the oldest manuscript (E) places the rubric before *Ine* 14, which details the burden of proof imposed on one who is accused of collaboration with a gang, while two later manuscripts (Bu and H) position it before *Ine* 13.1. As it happens, *Ine* 13.1 is a

¹⁶ Liebermann, following Schmid, labelled this clause 9.1 and the following clause 9.2. Although he was not entirely happy with the numeration, he maintained it for the sake of consistency: 'Eine Änderung der Schmid'schen Zählung hätte die Zitierung in der reichen Literatur unbrauchbar gemacht' (*Gesetze*, III, p. 40). Both Attenborough, and Whitelock (in *EHD*), emulated Liebermann's numeration, thereby perpetuating the problem. For a discussion of the issues raised by re-numbering the law-codes, see the appendix, 'Editing the Anglo-Saxon Laws', pp. 339-44.

definition introducing new subject-matter (a distinction between thieves, gangs and raiding-parties, and the penalties for complicity in each of these groups). The reading of the later manuscripts is certainly better, and on this basis I have emended the text in my edition.¹⁷ The matter is complicated further by the fact that *Ine* 15 is related to the same undertaking as the previous two clauses, since it concerns participation in a raiding-party. Unlike *Ine* 14, however, it is assigned a separate rubric, while *Ine* 15.1, which introduces new subject-matter, is not. One final example in this category should suffice to illustrate the point more simply. The three clauses, *Alf.* 15-17, deal with three distinct subjects: fighting in the presence of an archbishop, bishop or ealdorman (*Alf.* 15); stealing a cow (*Alf.* 16); and the maintenance of a helpless dependant (*Alf.* 17). Of these three clauses, only *Alf.* 15 is rubricated.

The apparent absurdity of this rubrication is further emphasized by the fact that some sub-sections, which merely elaborate upon a theme disclosed in the main section, are given separate rubrics. One of the clauses mentioned above (*Ine* 15) provides an example of this, but there are several others: *Alf.* 28, 30, 31; *Ine* 21, 44, 59, 65, 66 and 73. The contrast between the rubricated sections, *Alf.* 30 and *Alf.* 31, and the

¹⁷ See volume two, p. 153.

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unrubricated section, *Alf.* 39.2, is striking. All three provisions concern the increase of penalties upon an offender when the victim has a wergild of six hundred or twelve hundred shillings, but the earlier occurrences are inexplicably rubricated while the later one is not. Clearly the rubricator did not attempt to distinguish consistently between the introduction of new material and the expansion of related material included in separate sub-sections.

It is difficult to see any functional purpose in this haphazard rubrication; and, given its limitations, one should hesitate before attributing the rubric-list to King Alfred simply because it is contained in the extant manuscripts.¹⁸ Taken cumulatively, this detail suggests that either the rubricator was incompetent, or he was not attempting to rubricate the text for utility - a general impression further substantiated by the content of the rubrics, which manifestly differ from the text on several occasions. This is the most telling class of error, and as such the most striking examples warrant being examined individually. I have therefore tabled them below.

¹⁸ Another alternative is that the rubric-list was part of the original ordinance, but was substantially altered during the process of transmission. This is, of course, a possibility, although there is no direct evidence to support it. The addition of a 'complete' table of chapter-headings is a more plausible supposition.

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TABLE 14
DISCREPANCIES BETWEEN THE RUBRICS AND THE TEXT

Note: R=rubric and T=Text

(1)

R- ·IX· Be nunnan hæmede.
T- ·VIII· Gif hwa nunnan of mynstere utalæde...
 [Alf. 8]

(2)

R- ·XIX· Be preosta gefeohte.
T- ·XVIII· Gif preost oðerne mon ofslea...
 [Alf. 21]

(3)

R- ·XX· Be eofetes andetlan.
T- ·XX· Gif mon on folces gemote cyninges gerefan
 geyppe eofot... [Alf. 22]

(4)

R- ·XLVI· Be cildum.
T- ·XLVI· Cild binnan ðritegum nihta sie
 gefulwad... [Ine 2]

(5)

R- ·LXXII· Be ðeofes onfenge æt ðiefðe.
T- ·LXXII· Se ðe ðeof gefehð, ah ·x· scillinga, 7 se
 cyning ðone ðeof... [Ine 28]

(6)

R- ·LXXXI· Be cirliſces monnes ontygnesse æt ðiefðe.
T- ·LXXXI· Se cirliſca mon, se ðe oft betygen wære
 ðiefðe, 7 þonne æt siðestan synnigne
 gefo... [Ine 37]

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(7)

- R- ·LXXXVIII· Be wuda onfenge butan leafe.
T- ·LXXXVIII· Gif mon þonne aceorfe an treow þat mæge
 ·xxx· swina undergestandan... [*Ine* 44]

(8)

- R- ·C· Be gehwelces ceapes angelde.
T- ·C· Gif mon hwelcne ceap gebygð, ⁊ he ðonne
 onfinde him hwelce unhælo on binnan
 ·xxx· nihta... [*Ine* 56]

Before proceeding, one must address another possible explanation for the discrepancies between the rubrics and the text. It is conceivable that the rubricator, through an innate knowledge of customary practice, possessed an understanding of the substance of the laws not always immediately evident to us from the text alone. If this was the case, he could have used the rubrics deliberately to expound upon the meaning of the text as a type of commentary upon the code. Yet this seems a most unlikely explanation of the rubricator's motives, given the type of errors which are made; furthermore, only 120 clauses of the law-code are rubricated. There is certainly clear evidence of interpolation, but generally these additions fail to reflect the central concern of the law which is rubricated. For example, rubric ·IX· (list no. 1) concerns sexual intercourse by a nun ('Be nunnan

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hæmede').¹⁹ In the text there is no direct mention of such fornication, although it may be reasonable to suppose that a person who leads a nun out of a minster ('mynstere utalæde') does so for reasons incompatible with the monastic life, perhaps including illicit cohabitation. Yet even if this is a valid explanation of the motives lying behind the prescription, the matter of sexual impropriety (which is the subject of the rubric) is addressed in the text at best indirectly. This provision is intended primarily for the person who leads a nun out of the minster, imposing a heavy fine upon him.²⁰ It is not until *Alf.* 8.2 that the text addresses the matter of procreation by the renegade nun, and even then the clause concerns the question of the child's status in relation to the disposition of the father's estate after death, rather than the manner of the child's conception. This rubric neither summarizes the contents of the clause it purports to rubricate, nor does the rubricator's assessment of the situation emphasize the central concern of the law. Only in the loosest possible terms could it be regarded as a blanket heading covering all four clauses (*Alf.* 8-8.3).

¹⁹ It should be noted that the form of the Roman numeral nine (VIIII/IX) consistently differs between the rubrics and the text in the oldest manuscript. Cf. list nos 1 and 2.

²⁰ This is why 'nunnan' is better translated as dative and not genitive. It is not the nun's sexual intercourse that is predominately at issue, but that of her seducer.

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Rubric ·XIX· (list no. 2), which concerns the fighting of priests ('Be preosta gefeohte'), also indicates a degree of interpolation. The text, which concerns homicide by a priest, is ambiguous: the indefinite pronoun ('mon'), used with 'oðerne' to describe the person killed, could mean 'another man'. It could also mean 'another one', referring specifically to a priest. On stylistic grounds, the former of these two alternatives is the more likely, since one might have expected the author to indicate explicitly that the deceased was a 'preost', if this had been intended.²¹ The nature of the act committed also differs between the rubric and the text; the rubric concerns 'fighting' while the text concerns 'homicide'. Although fighting may frequently have lead to homicide, there is no indication elsewhere in the law-code that the verbs 'feohtan' and 'ofslean' are used synonymously - indeed it is patently ridiculous to expect this.²² The rubricator appears to be speculating about the cause of the homicide, or at least making unwarranted assumptions based on the evidence of the text as we have it. Rubric ·LXXII· (list no. 5),

²¹ There is a comparable prescription in the Penitential of Theodore (XIV:4): 'Seruo Dei nullatenus licet pugnare, multorum licet sit concilio seruorum Dei' (see Haddan and Stubbs, eds., *Councils and Ecclesiastical Documents*, III, pp. 173-204).

²² Other provisions which deal with fighting state explicitly where the conflict leads to death: see *Alf.* 15, 27, 38, 39, 42.4-42.7; *Ine* 6-6.3.

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provides similar evidence of interpolation, for although the rubric concerns 'the capture of a thief at the theft', the text fails to indicate that to qualify for a reward, one must apprehend the thief in flagrant delict.

The errors in rubrics ·XLVI·, ·LXXXVIII· and ·C· (list nos 4, 7 and 8) all resemble one another. The error in rubric ·XLVI· (list no. 4) appears to have occurred as a result of the rubricator reading only the first few words of the text, using them as the basis for his rubric. Strictly speaking, this is not a mistake; but in rubricating 'Be cildum', the rubricator neglects the fact that the central concern of the text is actually baptism ('fulwiht'). Similarly, rubric ·LXXXVIII· (list no. 7) also stresses an aspect of the provision which is not the central one. The text is about the removal of 'an treow þæt mæge ·xxx· swina undergestandan' ('a tree that thirty swine could stand underneath'). Its chief concern is not, as the rubric suggests, the taking of wood without permission, since that is dealt with specifically in the previous clause (*Ine* 43.1). The issue here is the size of the tree and its utility: the fact that thirty swine can shelter under it suggests that this tree is very big, especially useful, and deserving of special protection. The rubricator failed to recognize this, and the rubric to *Ine* 44 could apply equally well to *Ine* 43.1. It is not satisfactory to suggest that these laws

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were being rubricated as a group, for if that was the case one might have expected the first relevant clause to have a chapter-heading. Rubric ·C· (list no. 8) again does not address the central theme of the law. The text is primarily about the discovery of an imperfection in cattle after its purchase, but the rubric concerns 'angeld' (the price paid for the cattle). One tenuous link between the statement in the rubric and the provision of the text is that the law provides that a purchaser may return flawed cattle to a vendor within thirty days of purchase. One assumes that the purchaser could recover the purchase price, but this is not stated explicitly in the text. It is difficult to see a functional purpose in any of these chapter-headings, for only infrequently do they guide the reader to clauses of interest by summarizing the substance of the text rubricated. More often than not one has to infer a causal connection between a rubric and the text which is rubricated, when one might reasonably expect the meaning of the former to be self-evident if it was intended as a guide to the latter.

The remaining examples might just as suitably be classified under the next category of error, namely ambiguity. *Alf.* 22 addresses the bringing of an action at a public meeting and its subsequent withdrawal. Rubric ·XX· (list no. 3), indicates that the law is about

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confession of a crime ('Be eofetes andetlan'), thereby implying that the rubricator did not distinguish between the verbs 'geandettan' (to confess) and 'geyppan' (to disclose, used specifically in this context to mean to bring legal action). They are certainly related concepts, although here 'geandettan' implies action on behalf of the criminal, while 'geyppan' refers to the action of an aggrieved party. Rubric ·LXXXI· (list no. 6) involves a more subtle distinction. The rubric addresses the matter of charging a *ceorl* with theft, while the text is concerned with the prescription of a penalty for a *ceorl* who, having been accused of theft often, is finally convicted. Furthermore, the text prescribes the comparatively rare punishment of mutilation, which, admittedly on the basis of a subjective judgement, one might have expected to see mentioned in the rubric.

As already intimated, the most common type of error in the rubrics is ambiguity. This occurs so frequently as to diminish any remaining practical purpose that these headings might have possessed. There are so many examples of this class of error that one can but list the rubrics in which they occur, acknowledging that the seriousness of the ambiguities ranges from minor errors to the omission of important detail. For example, chapter ·XIIII· concerns deeds by the dumb and the deaf, although the rubric only mentions the dumb. Chapter ·XV·

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pertains to fighting in the presence of an archbishop, bishop or ealdorman, while the rubric only mentions fighting in the presence of a bishop. These are obviously relatively minor flaws. On the other hand, the most striking ambiguity is the rubricator's treatment of the tariffs for bodily injury at the end of Alfred's code. Having rubricated head-wounds and ear-wounds separately, he then summarizes the following thirty clauses (by my division) under one chapter-heading: '·XLIII·: Be monnes eagwunde ⁊ oðerra missenlicra lima' ('Concerning a man's eye-wound and [wounds to] other miscellaneous limbs').²³

Another type of ambiguity, which relates to the authenticity of the rubrics, is general variations of diction and vocabulary. These differences are remarkably common, and further suggest that the rubrics post-date the compilation of the text, since an author/compiler might be expected 'to follow fairly faithfully the wording of the text' when creating a list of chapter-headings.²⁴ This class of discrepancy only applies to Alfred's code, because the Ine appendix was obviously composed by someone other than the author of the rubrics.

²³ Ambiguities of this type occur in the following rubrics: XI, XII, XIII, XV, XVI, XXVIII, XXXIII, XXXVII, XXXVIII, XXXVIII, XLIII, L, LVIII, LVIII, LXVI, LXVIII, LXXVIII, LXXX, LXXXIII, LXXXVII, XC, XCII, XCIII, XCIII, XCV, CI, CII, CXVIII. This list does not include discrepancies in vocabulary between the rubrics and the text, except where the meaning of the word used in the rubric is substantially different from that used in the text.

²⁴ Batley, ed., *The Old English Orosius*, p. lxxxi.

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Yet one might have expected the rubricator to adopt the language used in the appendix when compiling the chapter-headings, and this alone is sufficient reason to list the discrepancies between the Ine rubrics and the text of that code. Since this class of error is particularly telling, every significant example is given below.

TABLE 15
RUBRICS: DISCREPANCIES OF VOCABULARY

ALFRED

<u>Chap. V</u>	<i>rubric:</i>	hlafordsearwe;
	<i>text:</i>	cyninges sierwe
<u>Chap. VII</u>	<i>rubric:</i>	circan stale;
	<i>text:</i>	cirican... geðeofige
<u>Chap. X</u>	<i>rubric:</i>	bearneacnum wife ofslægenum;
	<i>text:</i>	wife mid bearne ofslea
<u>Chap. XI</u>	<i>rubric:</i>	forlegenum; <i>text:</i> hæme
<u>Chap. XII</u>	<i>rubric:</i>	onfenge; <i>text:</i> gefo
<u>Chap. XIV</u>	<i>rubric:</i>	dædum; <i>text:</i> synna
<u>Chap. XVIII</u>	<i>rubric:</i>	befæstað; <i>text:</i> oðfæste
<u>Chap. XX</u>	<i>rubric:</i>	andettan; <i>text:</i> geyppan
<u>Chap. XXII</u>	<i>rubric:</i>	nietena misdædum;
	<i>text:</i>	neat... gewundige

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<u>Chap. XXIV</u>	<i>rubric:</i>	<i>hlop slyhte; text: hloþe ofslea INE</i>
<u>Chap. XLV</u>	<i>rubric:</i>	<i>regole; text: ryhtregol</i>
<u>Chap. LII</u>	<i>rubric:</i>	<i>ryhtes bene; text: ryhtes bidde</i>
<u>Chap. LV</u>	<i>rubric:</i>	<i>gelondan; text: geleod</i>
<u>Chap. LIX</u>	<i>rubric:</i>	<i>Be herige; text: hereteama</i>
<u>Chap. LXXIII</u>	<i>rubric:</i>	<i>þeow; text: esne</i>
<u>Chap. LXXV</u>	<i>rubric:</i>	<i>tostande; text: forþ ne cume</i>
<u>Chap. LXXXVI</u>	<i>rubric:</i>	<i>landhæfene; text: hæbbe hide landes</i>
<u>Chap. LXXVII</u>	<i>rubric:</i>	<i>horsweale; text: horswealh</i>
<u>Chap. LXXVIII</u>	<i>rubric:</i>	<i>monslihte; text: monnan ofslege</i>
<u>Chap. LXXX</u>	<i>rubric:</i>	<i>þeofes onfenge...forlæte; text: þeof gefehþ...alæte</i>
<u>Chap. LXXXII</u>	<i>rubric:</i>	<i>ryhtgesamhiwan; text: ceorl 7 his wife</i>
<u>Chap. LXXXV</u>	<i>rubric:</i>	<i>ondsacan; text: oþsacan</i>
<u>Chap. LXXXVIII</u>	<i>rubric:</i>	<i>wuda onfenge; text: aceorfe an treow</i>
<u>Chap. XCVII</u>	<i>rubric:</i>	<i>forefonge; text: befo</i>
<u>Chap. XCVIII</u>	<i>rubric:</i>	<i>tyhtlan; text: betogen</i>
<u>Chap. CVI</u>	<i>rubric:</i>	<i>fordræfe; text: bedrifeþ</i>
<u>Chaps. CXVI and CXIX</u>	<i>rubrics:</i>	<i>forefonge; text: gefehþ and befehþ</i>

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This is an extensive list, providing strong circumstantial evidence to suggest that the rubrics were composed by someone other than the author/compiler of the law-code, for only some of these examples can be explained away as mere stylistic variation. A detailed discussion of Alfredian vocabulary is not within the scope of this work; indeed a full-length study of the subject is required. Nevertheless, the frequency of these changes implies (at the very least) that the composition of the rubrics was undertaken as a separate endeavour, independently from the composition of the text.

The failure of the rubrics to exhibit any conspicuous pragmatic function has been deftly exploited by Patrick Wormald, who sees in Alfred's compilation as a whole a symbolic or ideological purpose at least equal to its utilitarian value. His arguments deserve close attention, and have found acceptance in recent work on the law-code.²⁵ Wormald, who has greatly augmented the argument of Wallace-Hadrill (discussed in the introduction to this dissertation), pointed out that Christianity, 'the Church and the Bible', was a source of inspiration for early medieval legislators, since the Bible contained the model legislation which Moses derived from God. Clearly the Mosaic example was a powerful one,

²⁵ See, for example, Frantzen, 'King Alfred's Law Code', in *King Alfred*, pp. 11-21; but Cf. Keynes, 'Royal Government and the written word in late Anglo-Saxon England', pp. 226-57.

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and the law received from God fundamental. Wormald saw 'the impact of Moses' most clearly in the lawbook of King Alfred.²⁶

His 120 chapters might make legal nonsense, but 120 was well-known to be the age at which Moses died, and the number of disciples upon whom the Holy Ghost descended at Pentecost; it was thus a highly appropriate number of chapters for a law-book that was prefaced by a selection of Mosaic law, and an account of its modification by the early Church at Jerusalem.

This is a cogent explanation of the otherwise inexplicable, and obviously contrived, number of rubrics.²⁷ The medieval passion for numerology, and the obvious linking of Mosaic law with temporal regulations in *Alfred-Ine*, may be sufficient explanation of why this configuration of rubrics was adopted; although it is also possible that 120 was no more than an obvious round number.²⁸ The division is certainly far from subtle, and

²⁶ Wormald, '*Lex Scripta and Verbum Regis*', p. 132

²⁷ In his forthcoming book, Wormald sets out in detail the significance of the number 120, which was 'deployed with such tireless ingenuity by early medieval exegetes'. I do not attempt, therefore, to discuss all the evidence for the numerological use of 120 in pre-Alfredian writings.

²⁸ According to Hopper, one must 'distinguish...between the philosophical or scientific use of number, the symbolic, the imitative, and the merely naive preference for certain commonly used numbers'. Of this latter instance he warns that 120 was as 'recognizable' a round number as 100 (Hopper, *Medieval Number Symbolism*, pp. 127-28). Another possible example of 'number symbolism' in *Alfred-Ine* occurs in *Alf.* 1.2, where *forty nights* imprisonment is prescribed for breach of a pledge (see volume two, p. 55).

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it is rendered all the more incongruous by the bumbling manner in which it was achieved.

The danger with this type of argument is that its ramifications can be pressed too far. In his pioneering article Wormald further rationalized the symbolism of this division.²⁹

Alfred's legislation constituted a remarkable attempt to set out the relationship between Divine Law and the laws of the Anglo-Saxons, who were thus invited to fuse as a new holy people. Indeed, it may be that we should explain the association between the *domboc* and the Anglo-Saxon chronicle in two early manuscripts...as an attempt not to mirror the Roman diptych of laws and wars, but to present a sort of West Saxon counterpart to the book of Exodus, in which the people's victorious wanderings is followed [sic] by a record of law.

This is also an ingenious hypothesis, which goes some way towards explaining the purposeful configuration of texts in the Parker codex (E). One wonders, however, just how far it can be used to explain the structure of the law-code. To regard the manuscript as presenting 'a sort of West Saxon counterpart to the book of Exodus' is conceivable. To extend this argument to the contention that Alfred may have wished to present the English as 'a new holy people', based on the evidence of the law-code in its manuscript context, is less convincing; and it denies the possibility that somebody other than Alfred could have been responsible for presenting the code in

²⁹ Wormald, '*Lex Scripta and Verbum Regis*', p. 132.

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this form. The 'ideological aspirations' which Wormald attributes to Alfred personally could reflect a later perception of Alfred's achievements by someone viewing his reign with the benefit of hindsight. The intellectual stimulus which prompted the arrangement of the Parker codex might be attributable to Alfred indirectly; yet one cannot, of course, attribute to the king the symbolic design of the collection, since Alfred had been dead some fifty years when the law-code was added to the manuscript.

Wormald's argument is obviously not based solely upon the symbolism of the number 120, the perceived significance of which is only realized when read in conjunction with the excerpts from Mosaic law which introduce the code. The Biblical Introduction is the subject of detailed consideration later in this chapter; it would, however, be as well to consider Wormald's arguments here, before presenting an alternative interpretation.³⁰ There is no doubt that Wormald is correct to emphasize the importance of the biblical material, thereby refuting Attenborough's contention that

³⁰ Wormald's views about the nature of this biblical material, and its significance for the code as a whole, will be expressed more fully in his forthcoming book, and it is not my intention to preempt his arguments. He sees Alfred's 'priorities when compiling his lawbook' as 'literary and ideological', based on the belief that 'he himself gave it the form that has descended to posterity'. I see the purpose of the code as fundamentally pragmatic and didactic, and am not fully convinced that its form is original.

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it has 'no bearing on Anglo-Saxon law'.³¹ This observation was generated by an inability to look at the law-code as a product of its time, and, as the next section of this chapter will show, the Biblical Introduction provides important evidence both of Alfred's attitude to the law and his treatment of the law-code's sources. One must realize that any attempt to equate the function of Anglo-Saxon law-codes with modern legislation is doomed to failure, because the Anglo-Saxon laws were stimulated by different concerns, and were used in an entirely different way. This is one reason why they were not cited by chapter and verse in the records of dispute settlement. Alfred's Biblical Introduction gives a good indication of the forces motivating the production of this code, but it is not necessary to go to the extreme length of regarding it as an invitation for the 'West Saxons' (or even the Anglo-Saxons) to 'fuse as a new holy people'.

As already suggested, the text may well have been intended primarily for those in positions of authority, whose judgements (according to Asser) were closely scrutinized by the king himself. Indeed Asser tells us

³¹ Attenborough, ed., *The Laws of the Earliest English Kings*, p. 35.

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that Alfred would chide his judges if they admitted making unjust judgements 'because they had not known better in the circumstances',³²

'I am astonished at this arrogance of yours, since through God's authority and my own you have enjoyed the office and status of wise men, yet you have neglected the study and application of wisdom.'

These may not be Alfred's own words, quoted verbatim, but the testimony of Asser is supported by the wider corpus of Alfred's own writings. The king was clearly concerned that his officials should apply themselves to 'the study and application of wisdom', and, in one of his works, Alfred wrote:³³

Therefore a man never attains virtue and excellence through his power; rather he attains power and authority through his virtue and excellence...Study wisdom, therefore, and when you have learned it, do not neglect it, for I say to you without hesitation that you can attain authority through wisdom.

What text could instil a more fundamental sense of the association between 'God's authority' and royal prerogative than a law-code which combined the fundamental Christian imperatives of the Book of Exodus with secular regulations? The primary function of the Biblical Introduction was surely didactic; but if this

³² Asser, ch. 106 (edited by Stevenson, *Asser's Life*, p. 93, and translated by Keynes and Lapidge, *Alfred the Great*, p. 110).

³³ See Sedgefield, ed., *King Alfred's Version of Boethius*, p. 35; quoted in Keynes and Lapidge, *Alfred the Great*, p. 206.

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law-code was designed as a work of reference, one of those works which Alfred himself characterized in the preface to his translation of Gregory's *Cura Pastoralis* as 'ða ðe niedbeðearfosta sien eallum monnum to wiotonne' ('those which are the most necessary for all men to know'), why should it begin with a disordered and misleading set of rubrics?³⁴ Number symbolism alone cannot account for the existence of this table, and it seems far more probable that the rubrics were added after the composition of the code, by someone who did not fully understand the text. Their addition may have been an Alfredian initiative, or it could have occurred later, perhaps when the Ine appendix was added. Neither of these possibilities can be denied categorically.

Although the two most eminent nineteenth-century editors of *Alfred-Ine* printed it as a single entity, they disagreed about the nature and authenticity of the rubrics. Milton Turk, who published his edition in 1893 (five years before the appearance of the first fascicle of Liebermann's *Gesetze*) believed that the 'chapter

³⁴ This reference to Alfred's programme of translation is preceded only a few lines earlier by a discussion of how God's Law (*sio æ*) had been translated from Hebrew into the vernacular by all Christian peoples, beginning with the Greeks and Romans. The Bible was perhaps the 'most deep-rooted influence on Alfred'; and the introduction to his code contains the earliest surviving continuous prose translation of the Bible in England (followed by the king's translation of the first fifty psalms). Regarding the influence of scripture on Alfred's reign, see Keynes, 'Alfred the Great and Athelred the Unready', pp. 209-10. Cf. below, pp. 232-33.

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headings' were genuine, describing them as belonging 'to the literary, rather than to the legal, character of Æ.'s [Alfred's] work'.³⁵ This, according to Turk, explains the fact 'that they [the rubrics] are not given to every law nor to laws alone', a suggestion endorsed and elaborated upon by Patrick Wormald in his forthcoming book. The most interesting aspect of Turk's brief discussion of the chapter-headings is his comparison of them with the rubrics in Alfred's translation of the *Cura Pastoralis*.³⁶

In the Pastoral Care and in other Latin writings appear headings over the chapters indicating the contents of each. These are placed all before the text as a sort of synopsis or table of contents. Our headings are quite similar in form to those in P.C. and are possibly modelled directly after that translation.

Liebermann, who disagreed with Turk, dismissed the rubrics sharply as 'zu fehlerhaft, unfrei und unvollständig, um als authentisch gelten zu können'.³⁷ He also dismissed Turk's suggestion that the form of the rubrics in the law-code was somehow derived from Alfred's translation of the *Cura Pastoralis*.³⁸

³⁵ Turk, ed., *The Legal Code*, p. 47.

³⁶ *Ibid.*

³⁷ Liebermann, ed., *Gesetze*, III, p. 40. In this assessment he agrees with his predecessor Schmid, and with Thorpe. The latter wrote: 'it may almost be superfluous to remark, that these titles must have been a work of later date than the first enactment of the laws' (Thorpe, ed., *Ancient Laws*, I, p. 77).

³⁸ *Ibid.*

Turk tritt für die Authentizität ein, weil Ælfred auch die Gregor-Übersetzung rubrizierte. Aber das beweist nichts: die Überschriften sind da anderer Art und aus Gregor mitübersetzt.

Liebermann is correct about this, insofar as the rubrics to Alfred's translation of the *Cura* also occur in the Latin original, where their role is far more the 'sort of synopsis' which Turk saw as the function of the chapter-headings in Alfred's code.³⁹ More interesting, however, is the layout of the rubrics in Oxford, Bodleian Library, MS Hatton 20, the earliest extant manuscript containing Alfred's translation of the *Pastoral Care*, written sometime during the last decade of Alfred's life.⁴⁰ In MS Hatton 20 there is a table of rubrics (ff. 3r-5v) whose layout closely resembles that in the oldest manuscript of the law-code (E). It is unlikely that Alfred's Latin source set out the rubrics in tabular form, and the same is true of the rubrics in the contemporary translation of the *Old English Bede*, which was probably prepared as part

³⁹ The best Latin version of the *Cura Pastoralis* is contained in Migne, ed., *Sancti Gregorii Papae Dialogarum Libri*, pp. 13-128. A convenient discussion of the different Latin recensions is contained in Frantzen, 'The *Pastoral Care*: Translation of Gregory the Great', in *King Alfred*, pp. 22-42.

⁴⁰ There is a facsimile of the manuscript edited by Ker, *The Pastoral Care*. Ker has rehearsed the arguments for dating this manuscript to 890x97 in his *Catalogue* (no. 324, pp. 384-85), and in the introduction to the facsimile. The best edition of Alfred's translation remains that by Sweet, ed., *King Alfred's West-Saxon Version of Gregory's Pastoral Care*.

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of Alfred's programme of translation.⁴¹ Both MS Hatton 20 and CCCC MS 173 (E) set out the rubrics line by line, and both number them using Roman numerals with raised points on either side. These numerals are written in their own margin at the extreme left-hand edge of the leaf in both manuscripts. Both lists of rubrics are deliberately separated from the text which follows them, in MS Hatton 20 by thirteen blank lines after the last rubric, and in E by eight lines and an entirely blank folio (f. 35v). One can do no more than record these similarities, because the precise form of the Latin texts which Alfred translated remains a mystery; he may have imposed this form upon the texts, or it may simply be a scribal initiative.⁴² It is also worth noting the possibility that the archetypes of these two manuscripts could have been written by the same scribe or group of scribes, for despite the influx of continental scholars, Alfred's court cannot have been over-endowed with competent scribes when these translations, and the law-code, were copied.⁴³

⁴¹ See Whitelock, 'The list of chapter-headings in the Old English Bede', p. 265.

⁴² There are eleven manuscripts of Anglo-Saxon provenance containing the *Cura Pastoralis*, none identical to Alfred's translation as we have it. One cannot say for certain, therefore, whether or not the table of rubrics occurred in the Latin original. For details about the various Latin manuscripts, see Jeffery, 'The Latin Texts underlying the Old English Gregory's *Dialogues* and *Pastoral Care*'.

⁴³ Cf. the situation at the archiepiscopal writing office in Canterbury (discussed below, pp. 220-21). See also Ker, ed., *The Pastoral Care*, p. 19.

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As already indicated, the translation of the *Cura Pastoralis* is not the only translation, undertaken either by Alfred personally or as part of his programme, to have capitula. Both the Old English *Orosius* and the translation of Bede (by scholars other than Alfred) are rubricated, and the authenticity of these rubrics is also disputed. Professor Bately has provided a detailed discussion of the *Orosius* rubrics in her edition of that text.⁴⁴ All of the manuscripts of the *Orosius* have rubrics, although they differ in each of the manuscript traditions. Bately has argued that 'there seem to be reasonably good grounds for supposing that the compiler of the list of chapter headings was not the author of Or'. Indeed Bately's description of the errors in the list of *Orosius* rubrics could be applied equally well to the rubrics of the law-code.⁴⁵

First of all, as a guide to the contents of the book it is little more useful than a list of first lines: often it is just the first item in the chapter that is referred to, though sometimes two or three--rarely more--additional items are included.... Otherwise the list is at once unselective, mechanical, and unhelpful, and nowhere reflects what the text suggests to have been the translator's special interests....

⁴⁴ Bately, ed., *The Old English Orosius*, pp. xxxvii-xxxix and pp. lxxxi-lxxxiii.

⁴⁵ *Ibid.*, pp. lxxxi-ii.

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⁴⁵ *Ibid.*, pp. lxxxi-ii.

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Secondly, although the list of chapter headings derives the bulk of its vocabulary from the text, it contains certain variant usages which are either not typical of or alien to the text.

It is possible that the problems posed by, and occurring in, the chapter-headings of these different Alfredian texts is no coincidence, and it could be argued that instructions to create the lists of chapter divisions emanated originally from Alfred even if the actual execution was the work of an incompetent. Both suppositions are, however, impossible to prove. Comparison of the law-code with the translations can only reveal so much, for they are, after all, an entirely different type of production. The *Pastoral Care* rubrics are ultimately derived from the Latin original, and Professor Bately has argued strongly that the *Orosius* rubrics are the work of a later interpolator. As far as the rubrics to the Old English translation of Bede are concerned, Professor Whitelock left the matter open, suggesting that they 'may be by the translator of the work', or they may have been entrusted 'to a pupil or colleague'.⁴⁶

⁴⁶ Whitelock, 'The list of chapter-headings in the Old English Bede', p. 277

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If the intended function of the rubrics to the law-code was utilitarian, then one could be forgiven for expecting not only more of them, but also a higher degree of relevancy in those that we have. Furthermore, even if there is logic behind the division of the code into 120 chapters, it is a rationale far more literary than pragmatic.⁴⁷ While these two qualities may not be mutually exclusive, it is the contention of this dissertation that *Alfred-Ine* gains its authority, and hence its symbolic power, not as a literary and ideological production, but as an act of sovereignty inspired by the concern to see just Christian law applied by wise arbitrators. As a fuller picture of the motivating interests behind this work begins to emerge, it will become clear that Alfred's law-code was primarily a didactic instrument of government. This didactic ideal should not be underrated, for it helps to explain the production of the Biblical Introduction. It does not, however, greatly elucidate the purpose of the rubrics. On the contrary, it may speak against their authenticity, since all the evidence suggests that the chapter-headings could actively mislead an official trying to use the work. This does not fit well with

⁴⁷ One cannot deny the 'literary' character of the law-code's preface, first alluded to by Turk, and which was stressed by Frantzen in his book on King Alfred's 'literary endeavours' (*King Alfred*, p. ix). Yet even this preface has a pragmatic purpose, and the same cannot be said of the rubrics as they stand.

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Alfred's manifest intention, namely to encourage his officials in the acquisition of both *sapientia* (wisdom) and *scientia* (earthly knowledge).⁴⁸ In this sense, both the law-code and the programme of translation, form part of the same enterprise: the promotion of learning as a means to the acquisition of the *beata vita*. Thus, having questioned the form and function of the rubrics, one must turn to the remainder of the law-code, and look for signs of Alfred's purposeful design. For the Biblical Introduction and the code in Alfred's name undoubtedly form the central core of the compilation as we have it, and by examining them closely, one may hope to find evidence pertaining the other, less explicable, sections.

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The transition from the rubrics to the next section of the code is a movement from uncertainty to much surer ground. For while the authenticity of the rubrics has been contested, no editor has ever called into question the originality of the Biblical Introduction. The style of the translation and its substance must largely account for this, and the layout of the text in both manuscript and printed form may be another contributory factor. In

⁴⁸ This Augustinian distinction was first used in an Alfredian context to describe the dominant themes in Alfred's preface to the *Cura Pastoralis* translation: see Szarmach, 'The Meaning of Alfred's Preface to the *Pastoral Care*', esp. pp. 63-81.

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the oldest manuscript (E), the rubrics are separated from the remainder of the code by eight lines on f. 35r, and by an entirely blank folio (f. 35v). This could be regarded as evidence of a deliberate segregation of the rubrics from the rest of the document, not least because it is both conspicuous and somewhat inexplicable. The construction of the quires certainly does not account for this space; it is almost as though room was left for additional rubrics, which, although anticipated, were never provided. In this context, it is worth noting that if each of the unrubricated clauses introducing new subject-matter is given a one line chapter-heading, virtually the whole of this blank folio would be filled. The single line separating the Biblical Introduction from the beginning of Alfred's prologue (Bib. Int. 49.9) is more readily explicable, for at that point there is a distinct shift from the third-person description of Christian synods to the first-person description of Alfred's own actions (which is emphasized by the large capital 'I' of 'Ic ƿa Ælfred cyning...').

The layout of any manuscript is, of course, a scribal prerogative, and is therefore of limited value when interpreting a text. Yet to ignore it altogether is as dangerous as over-emphasizing its importance, and in the past long-standing misapprehensions have been generated about the law-code for this very reason. In the

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editio princeps, Lambarde printed Ine's code first, followed by the Biblical Introduction and then the Alfred code. The rubrics were not printed as a table, rather they were added (with interpolations) above the individual chapters. This chronological arrangement persisted in every edition until 1840, when Thorpe broke with the tradition and published the code as a single entity. After a brief hiatus, represented by the editions of Turk and Liebermann, Attenborough re-adopted Lambarde's approach. As a result, Ine's code has come to be regarded as separate from that of Alfred, and the status of the rubrics has been obscured.⁴⁹ Only the Biblical Introduction has always been printed as it appears in the manuscripts, namely as an integral preface to the law-code bearing King Alfred's name.

The common authorship of the Biblical Introduction and the Alfred law is supported by an allusion to this biblical matter in Alfred's prologue, which begins:

Ic ƿa Ælfred cyning ƿas togædere gegaderode,
7 awritan het, monege ƿara ƿe ure foregengan
heoldon, ƿa ƿe me licodon....
[Bib. Int. 49.9]

The word 'ƿas' refers to Bib. Int. 49.8, one of the final sections of the Biblical Introduction, which occurs immediately after the rubricator's first chapter.

⁴⁹ The dangers inherent in ignoring manuscript evidence are discussed in the appendix: see pp. 332-39 below.

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Hie ȝa on monegum senoȝum monegra menniscra
misdæda bote gesetton, 7 on monega senoȝbec
hie writan, hwær anne dom hwær operne.
[Bib. Int. 49.8]

It is this law ('dom'), written in 'many synod-books' ('monega senoȝbec'), which Alfred says he gathered together and ordered to be written down. The word 'senoȝbec' is unique in the corpus of Old English, and one must wonder precisely what it implies.⁵⁰ It appears to be an indirect reference to Bib. Int. 49.7, which concerns the convention at 'synods' ('seonoȝas') of 'halegra biscepa 7...oȝerra geȝungenra witenas' ('holy bishops and...other distinguished councillors'), who established secular penalties, and especially monetary compensation ('fiohbote'), for all offences other than treason.⁵¹ These gatherings sound remarkably like meetings of the *witangemot*, but as Dr Keynes has observed, 'it is difficult to maintain a clear distinction between a council held under the auspices of

⁵⁰ See Healey and Venezky, eds., *A Microfiche Concordance*, fiche S013, p. 21 (and cf. *seonoȝ*, *sinoȝ*, *sionoȝ*, *synoȝ*).

⁵¹ It has been suggested that this passage about synods could have been prompted by a letter of Archbishop Fulco of Rheims to King Alfred (written about 886). There is certainly an ostensible similarity of thought between Fulco's letter and Alfred's introduction to the law-code, although the extent to which this should be regarded as influence by the former upon the latter is debatable. One should remember that Fulco's letter is a reply to King Alfred's request for assistance with his programme of educational reform, and since Alfred's letter is lost we do not know what he said to prompt these comments (let alone the tone of Fulco's letter). The letter is edited in Whitelock, *et al.*, eds., *Councils and Synods*, I, pp. 6-12, and is translated by Keynes and Lapidge in *Alfred the Great*, pp. 182-86.

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the church (and attended by the king) and a council convened by the king (attended by the bishops)',⁵² None of the extant laws to which Alfred referred as sources of his own law-code could well be described as synodal decrees, which seems the obvious definition of the word 'senoðbec'. Offa's law-code is, of course, lost; and recently Patrick Wormald has suggested that Alfred's citation of Offa's code could be understood as referring to the decree of the papal legates who visited England in 786, or perhaps to a vernacular ordinance based thereon.⁵³ The argument, though controversial, must be strengthened somewhat by the fact that Alfred calls the codes 'senoðbec', which, given its unique occurrence, must have been a carefully selected word, if indeed Alfred did not coin it himself.⁵⁴

The admixture of ecclesiastical and secular affairs, which causes such difficulty in the classification of 'church' and 'royal' councils, finds

⁵² Keynes, 'Anglo-Saxon Church Councils', p. 584.

⁵³ Wormald, 'Lex Scripta and Verbum Regis', p. 112, n. 40. The paper promised in that note is Wormald's forthcoming exposition 'In Search of King Offa's "Law-Code"'.

⁵⁴ The proem to a charter of Eorcenwald (S1248) states: 'Those things which are salubriously defined according to the decrees of canons and the statutes of synods (*decreta canonum ac statuta synodalia*)...ought to be strengthened by the firm record of writing and charters of warning'. This allusion to *statuta synodalia* is certainly worthy of notice in this context, not least because Eorcenwald is named expressly in the prologue of Ine's code. On this charter, see Wormald, 'Bede and the conversion of England', pp. 10-11.

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further expression in the form of King Alfred's law-code. Clearly Alfred himself did not have a partitioned view of the role of lay authority and that of the Church; he certainly sees himself as *dominus* of his kingdom, but the provisions of the law-code suggest that the archbishops were next in the social hierarchy.⁵⁵ Furthermore, one finds the most fundamental biblical commandments sitting cheek-by-jowl with Alfred's secular provisions, in an easy conjunction. Obviously these excerpts from the Book of Exodus were intended to set English law in the context of God's law given to Moses on Mount Sinai. This is not to say, as Sir Frank Stenton asserted, that 'the only object of this introduction was to acquaint his subjects with what Alfred regarded as a piece of model legislation', but it was probably one reason for the inclusion of the Mosaic commandments;⁵⁶ and J.M. Wallace-Hadrill suggested another, namely 'to link [Alfred's] own legislation with that of the Bible'.⁵⁷ Mosaic law was

⁵⁵ For the purposes of compensation, archbishops are rated more highly than ealdormen (who are equated with diocesan bishops): see *Alf.* 3, 15 and 40. These provisions should be contrasted with those of Ine's code, where such clear distinctions are not so apparent (cf. *Ine* 6.2, *Ine* 45). In this, Alfred's view coincides with that of Hincmar of Rheims, whose works (especially *De ordine palatii* and *De regis persona et regio ministerio*) show how 'absolutely and unequivocally the king's office was interpreted as a Christian one' (see McKitterick, *The Frankish Kingdoms under the Carolingians*, p. 189). These works may well have been known to Alfred through the Frankish scholars at his court, not least Grimbald of St. Bertin's.

⁵⁶ Stenton, *Anglo-Saxon England*, p. 275.

⁵⁷ Wallace-Hadrill, *Early Germanic Kingship*, p. 149.

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not, however, intended as a binding authority. That much, at least, is clear from the fact that Alfred reserved the death penalty for treason. He did not execute those who struck their parents (Bib. Int. 14), as prescribed by Mosaic law, and the list of tariffs for bodily injury (Alf. 44-77) make it clear that Alfred did not condone the Hebraic principle of 'an eye for an eye, a tooth for a tooth' (Bib. Int. 19), where, in general, his law-code seeks to curtail the blood-feud.⁵⁸

The function of this preface appears primarily to have been didactic. We do not know precisely what books Alfred considered 'most necessary for all men to know', but his law-code was probably one of them, together with the other works which he translated. Liebermann argued that Alfred's code 'was intended to be carefully perused by the judge and doomsmen of every court of law, and to influence the meanest subject as soon as he became a party in a lawsuit'.⁵⁹ This may be an overstatement of Alfred's purpose; and, as another of Liebermann's assertions demonstrates, he was not immune from using unsupported supposition as evidence of his opinions.⁶⁰

⁵⁸ Pace Wallace-Hadrill who wrote: 'With modifications he [Alfred] accepts the Mosaic law of Exodus as current, and by an excerpt from St. Matthew he demonstrates that Christ has also accepted it as current and valid' (*Early Germanic Kingship*, p. 149).

⁵⁹ Liebermann, 'King Alfred and Mosaic Law', p. 24.

⁶⁰ Liebermann, 'Ueber die Gesetze Ines von Wessex', p. 29.

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Von Alfreds Werk muss vor 900 jeder Bischof und Graf, wenn nicht jeder staatliche Gerichtshalter, ein originales Exemplar erhalten haben.... Keines ist erhalten.

This argument was obviously based on what is known about the circulation of manuscripts of the *Pastoral Care*, and it is true that the two works are analogous.⁶¹ Gregory's *Cura Pastoralis* was apparently the first translation which Alfred undertook; in order to educate the general populace, he initially wished to ensure the sound instruction of those in positions of authority, by providing them with a common work of reference to which they could turn for direction. If the *Pastoral Care* served this purpose for the bishops, the most likely work of instruction for the king's officials was the *domboc*, a sort of secular 'Shepherd's book' (*hierdeboc*).⁶² Nor is it entirely improbable that these two works of guidance were issued in close proximity to one another. It is, of course, in the context of widespread illiteracy that

⁶¹ The most detailed consideration of the matter (though post-Liebermann) is that of Sisam, 'The publication of Alfred's *Pastoral Care*', in *Studies in the History of Old English Literature*, pp. 140-47.

⁶² Turk also believed that the *domboc* was circulated for this reason (p. 33). In *Councils and Synods* (I, p. 16) Whitelock pointed out that 'it is not ignorance of the law, but neglect of the study and practice of wisdom that Alfred complains of'. She therefore believed that Alfred's judges may have been referred to the translations, 'and especially that of the *Cura Pastoralis*'. This is certainly possible, for there is much in the translations concerning the practice of government. One must not forget, however, that there is also more than adequate material in the law-code promoting both the pursuit of wisdom and the necessary acquisition of secular legal knowledge.

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Alfred's law-code must be construed. According to Asser, even some of the royal judges could not read, and had to undertake compulsory study in an attempt to acquire 'sapientia', where necessary through the agency of those more adept. Many of those 'ealdormen, reeves and thegns' who did learn to read at Alfred's insistence must, as Asser indicated, have been illiterate from childhood. This is not mere hyperbole, for Asser's comments are corroborated by Alfred's own observations about the state of learning when he acceded to the throne, made in his preface to the *Pastoral Care*.⁶³

Learning had declined so thoroughly in England that there were very few men on this side of the Humber who could understand their divine services in English, or even translate a single letter from Latin into English: and I suppose that there were not many beyond the Humber either. There were so few of them that I cannot recollect even a single one south of the Thames when I succeeded to the kingdom.

The general accuracy of these remarks is further verified by the evidence of contemporary royal diplomas written at the archiepiscopal writing-office in Canterbury. One particular diploma of 873 was drafted by 'a scribe who could barely see to read and write' and whose grammar was 'not capable of adapting the formulae

⁶³ Keynes and Lapidge, *Alfred the Great*, p. 125; the text is edited by Sweet, ed., *Gregory's Pastoral Care*, p. 2. This may be an exaggeration, for the fact that Alfred recruited three competent Latinists from Mercia implies that the tradition of Latin learning had not died out completely. On this, see Kelly, 'Anglo-Saxon lay society', pp. 52-53.

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of a royal diploma into a charter'. That such a scribe should be called upon at all suggests that the number of competent scribes at Canterbury had 'declined sharply and catastrophically in the late 860s or the 870s', and there was no-one else qualified to do the job.⁶⁴ Such was the intellectual milieu which stimulated the production of Alfred's translations and his law-code; and it is this situation, rather than that of the continent or elsewhere, which must be borne firmly in mind when looking at Alfred's reign and, more specifically, his literary productions. It seems doubtful that a king addressing these types of problems should place a premium on numerological symbolism, regarded by Wormald as sufficient explanation of the otherwise inadequate rubrics. Similarly, one should hesitate before attributing to Alfred, on the basis of the Biblical Introduction, any deeper purpose than a fervent desire to see his nation, and especially those running it, well-educated in both *sapientia* and *scientia*.

Alfred interpreted those texts which he translated by expanding and altering the meaning, and by freely interpolating. This is one of the self-professed characteristics of his style of translation: that he

⁶⁴ The charter, BL, Stowe Ch., 19 (S344), is discussed by Brooks, 'England in the Ninth Century: The Crucible of Defeat', pp. 15-16, and in more detail in his *The Early History of the Church of Canterbury*, pp. 171-74. Cf. Kelly, 'Anglo-Saxon lay society', pp. 53-54.

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of a royal diploma into a charter'. That such a scribe should be called upon at all suggests that the number of competent scribes at Canterbury had 'declined sharply and catastrophically in the late 860s or the 870s', and there was no-one else qualified to do the job.⁶⁴ Such was the intellectual milieu which stimulated the production of Alfred's translations and his law-code; and it is this situation, rather than that of the continent or elsewhere, which must be borne firmly in mind when looking at Alfred's reign and, more specifically, his literary productions. It seems doubtful that a king addressing these types of problems should place a premium on numerological symbolism, regarded by Wormald as sufficient explanation of the otherwise inadequate rubrics. Similarly, one should hesitate before attributing to Alfred, on the basis of the Biblical Introduction, any deeper purpose than a fervent desire to see his nation, and especially those running it, well-educated in both *sapientia* and *scientia*.

Alfred interpreted those texts which he translated by expanding and altering the meaning, and by freely interpolating. This is one of the self-professed characteristics of his style of translation: that he

⁶⁴ The charter, BL, Stowe Ch., 19 (S344), is discussed by Brooks, 'England in the Ninth Century: The Crucible of Defeat', pp. 15-16, and in more detail in his *The Early History of the Church of Canterbury*, pp. 171-74. Cf. Kelly, 'Anglo-Saxon lay society', pp. 53-54.

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renders his original 'hwilum word be worde, hwilum andgit of andgite'.⁶⁵ As one might expect, Alfred translated the Bible with a greater degree of fidelity to his original than one finds in the other translations, although it is not by any means an entirely literal rendering, free of all adulteration.⁶⁶ The Biblical Introduction begins with the Decalogue (Ex. 20:1-23), omitting the second commandment entirely (vv. 4-6), and also part of the fourth commandment (Bib. Int. 3) and the tenth commandment (Bib. Int. 9). The syntax of the fifth commandment (Bib. Int. 4) is changed, although the fundamental message remains the same ('Ara 8inum fæder 7

⁶⁵ Sweet, ed., *Gregory's Pastoral Care*, p. 7 and Sedgefield, ed., *King Alfred's Boethius*, p. 1. Cf. Asser, ch. 77.

⁶⁶ It is impossible to identify with any precision the Bible which Alfred translated. It was almost certainly a version of the Vulgate, although the possibility of contamination from the *Vetus Latina* ('Old Latin') tradition cannot be eliminated. The term *Vetus Latina* does not refer to a uniform version of the Bible, but rather to the multifarious Latin recensions preceding Jerome's translation. The last edition of the *Vetus Latina* to contain the Book of Exodus was that of Sabatier, ed., *Bibliorum sacrorum Latinae versiones antiquae seu Vetus Italica*. This will, in due course, be superseded by the work of the *Vetus Latina* Institute at Beuron, headed by Dom Bonifatius Fischer, at which time a more detailed examination of this question may become possible. It is known that Asser had access either to an Old Latin Bible or a heavily contaminated Vulgate, presumably at St. David's, Wales, whence he was summoned to King Alfred's court. This is clear from two citations of the Bible in the *Life of Alfred*: see Keynes and Lapidge, *Alfred the Great*, pp. 52-53, p. 258, n. 159, and p. 273, n. 241. Asser also says that he copied extracts from Holy Scripture and (presumably) patristic works into Alfred's *enchiridion*; these extracts could also have included material from the Old Latin tradition. For a useful discussion of the transmission of the Bible during the early Middle Ages, and the sources for studying it, see McNamara, 'The text of the Latin Bible in the early Irish Church. Some data and desiderata'.

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pinum medder').⁶⁷ The omission of the second commandment was originally noticed by Matthew Parker, who, together with subsequent editors including Lambarde, attributed this to the decree of the second Council of Nicaea (in 787), which declared adherence to the doctrine of the veneration of images expounded by Pope Hadrian I. Parker was obviously horrified by the alteration.⁶⁸

See what followed of taking away from the worde of God contrarye to the express commaundement of the same upon the ungodly decree of that councell.

However, as Turk pointed out, Alfred included Ex. 20:23 at the end of the Decalogue, thereby addressing much the same matter but seeking to limit its scope.⁶⁹ The

⁶⁷ In the Vulgate Bible, the commandment reads: 'honora patrem tuum et matrem tuam ut sis longeuus super terram quam Dominus Deus tuus dabit tibi'. Turk suggested that Alfred was confused by the ambiguity of *terra*, which he took as meaning the 'earth' rather than 'land' (a limited portion of the earth). This is not entirely convincing, and Liebermann refused to accept that 'a mere casual transposition of words' had taken place, preferring to read it as 'the intentional stress laid upon the dignity of parents by the loving son of Æthelwulf and Osburg' ('King Alfred and Mosaic Law', pp. 26-27). Liebermann's sentimentality may be hard to swallow, but it does seem improbable that Alfred should struggle to translate a simple adverbial 'ut' clause expressing purpose.

⁶⁸ Parker, *A Testimonie of Antiquitie*; cf. Lambarde, ed., *Archaionomia*, f. 18v. The second Nicaean Council declared that images are honoured with a relative love, whereas absolute adoration is reserved to God alone; therefore the honour given to an image passes to its prototype. For details, see Cross and Livingstone, eds., *The Oxford Dictionary of the Christian Church*, pp. 967-68.

⁶⁹ Turk, ed., *The Legal Code*, p. 34. In 'King Alfred and Mosaic Law', Liebermann argued that this is 'an insertion directed against the heathenism introduced by the Danish invaders' (p. 26).

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Biblical Introduction continues with a translation of Ex. 21:1 to Ex. 23:13; and while chapter twenty-one is translated virtually in its entirety with only minor alterations, chapters twenty-two and twenty-three are rendered much more freely: Ex. 22:12-15, 30 and Ex. 23:3, 5, 10-12 are omitted entirely, and changes (including selective omissions) occur at Ex. 22:3, 6-11, 16-29 and Ex. 23:7, 9, and 13. I do not propose to examine every minor alteration in detail, since many indicate little more than Alfred's willingness to alter his source. It is Alfred's reasons for making these changes that are significant.⁷⁰

Many of these changes further reveal Alfred's pragmatic motivation. Not only are the Mosaic injunctions translated so as to make them more accessible to an Anglo-Saxon audience, but the interpolations (as in his other translations) reveal evidence of Alfred's pre-eminent concerns.⁷¹ Both words and concepts are 'anglicized' to make them more readily comprehensible and

⁷⁰ This detail is included by Turk (*The Legal Code*, pp. 68-81), who printed the relevant extracts from a Vulgate Bible next to his Old English text, and italicized those words and phrases which Alfred altered. His Vulgate text must be used with caution, because differences existed between ninth-century Vulgate texts. One must also bear in mind the possibility of contamination from the *Vetus Latina* tradition.

⁷¹ This commonplace of Alfredian translation has been recognized for over a century. The most recent comparative discussion of the matter is contained in Bately, 'The Literary Prose of King Alfred's Reign: Translation or Transformation?'.

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applicable to the context in which this translation would have been read. Thus, on a small scale, 'seruum hebreum' becomes 'cristenne þeow' (Bib. Int. 11), 'seruum suum' is translated 'agenne þeowne esne' (Bib. Int. 17), and 'triginta siclos' becomes 'xxx. scillinga'. More significant is the provision regarding homicide caused by an ox when its owner refuses to enclose it. Having prescribed the death-penalty for both the ox and the man, the Latin qualifies this: '...et dominum illius occident quod si pretium ei fuerit impositum dabit pro anima sua quicquid fuerit postulatus' (Ex. 21:29-30). In keeping with English legal practice, this qualification is rendered: '...7 sie se hlaford ofslegen, oððe forgolden, swa ðæt witan to ryhte finden' (Bib. Int. 21). Similarly, Alfred modified the provisions of Ex. 21:7-11 concerning the sale of one's daughter into slavery. The biblical injunction prohibits re-sale by a dissatisfied purchaser: 'populo autem alieno uendendi non habet potestatem si spreuerit eam' (v. 8). The Old English translation changes the syntax, thereby criticizing the father who sold her in the first instance: '...nage he hie ut on elðeodig folc to bebycgganne' (Bib. Int. 12). In this case, Alfred is deliberately recasting the Mosaic law to make it appropriate to West Saxon custom (as expressed in *Ine* 11):

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Gif hwa his agenne geleod bebycgge, ðeowne
oððe frigne, ðeah he scyldig sie, ofer sæ,
forgielde hine his were.

Alfred's translation of Ex. 21:13 provides similar evidence of his re-casting, this time translating the Mosaic law to give it consistency with the Anglo-Saxon sanctuary laws (cf. *Alf.* 2-2.1). Having dealt with homicide without ambush, the Vulgate states: '...constituam tibi locum quo fugere debeat', and this is translated: '...sie he feores wyrðe, ⁊ folcrynhtre bote, gif he friðstowe gesece' (*Bib. Int.* 13).

Alfred was also prepared to remove material which was irrelevant to the English context of the translation. Much of Ex. 23:9-12 is omitted, partly because verse 12 recalls Ex. 20:8-11 (*Bib. Int.* 3) and might therefore have been considered redundant, and the remainder because it was not directly applicable to the English situation (though in *Bib. Int.* 33 the reference to 'elðeodige on Egipta londe' was not removed). Another characteristic of Alfred's style of translation is his deliberate compression of material to stress the main theme of a verse, if necessary by paraphrasing it, thereby conveying a clearer message to his audience. Thus he abbreviates the command to keep the sabbath holy (*Bib. Int.* 3), he omits the words 'contra proximum tuum' thereby generalizing the injunction 'Ne sæge ðu lease gewitnesse' (*Bib. Int.* 8), and rather than listing those

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things which one must not desire of a neighbour (his house, wife, manservant, maidservant, ox, ass, 'nec omnia quae illius sunt'), Alfred has simply encapsulated them all within the general term 'ierfe'.⁷² Similarly, when Alfred wished to broaden the scope of a clause, or to clarify a meaning, he frequently added an interpolation or explanatory phrase. Thus in Bib. Int. 12 (Ex. 21:10) the phrase 'pretium pudicitiae' is translated 'pæt weorð sie hiere mægðhades', to which is added the clarification 'pæt is se weotuma'. Similarly, Bib. Int. 30 (Ex. 22:18) involves both a misunderstanding and an interpolation.⁷³ The Latin states quite clearly that 'maleficos non pateris vivere'. Alfred translated this:

Ða fæmnan þe gewuniað onfon gealdorcræftigan
7 scinlæcan 7 wiccan ne læt þu ða libban.

Liebermann attempted to explain the mistake by arguing that in this context 'onfon' means not only 'to receive' but also 'to assist', and stating that accessories were generally treated 'in the same way as the criminals themselves'. Yet he was not much convinced by his own argument, and conceded:⁷⁴

⁷² Other examples of this type of compression occur at Bib. Int. 11 (Ex. 21:4,6), 16 (Ex. 21:18-19), 18 (Ex. 21:22), 21 (Ex. 21:30), 25 (Ex. 22:4), 26 (Ex. 22:5), 27 (Ex. 22:6), 28 (Ex. 22:8-9; cf. Ex. 22:20) and 34 (Ex. 22:24).

⁷³ Alfred's translation includes several other minor mistranslations (cf. Bib. Int. 4 and 28). He was obviously troubled by the biblical references to 'deos', and omitted them altogether from Bib. Int. 11, 28 and 37.

⁷⁴ Liebermann, 'King Alfred and Mosaic Law', p. 26.

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If these facts, taken together with Alfred's strict orthodoxy, fail to explain this alteration, we must fall back on the ingenious hypothesis of Professor Turk, who points out that the words "women are wont to receive" form in the Vulgate the conclusion of the preceding verse, and may, by a mere blunder of punctuation, have been mistaken for the beginning of the next.

This seems a more likely scenario, but it does not explain the interpolation; clearly Alfred was glossing the injunction, and thereby widening its scope. Other examples of this practice occur at Bib. Int. 13 (Ex. 21:13-14) and Bib. Int. 25 (Ex. 22:3), Bib. Int. 36 (Ex. 22:26-27), Bib. Int. 38 (Ex. 22:29) and at Bib. Int. 47 (Ex. 23:9).

These changes are indicative of a more elaborate purpose than simple translation; but Alfred's modifications of the text cannot be explained merely in terms of his desire to make the translation accessible, for he also stressed matters which he perceived to be of particular importance. The central theme of this translation, and the motivating force behind the promulgation of the law-book, is 'riht' (justice). From Asser's description of Alfred's judicial investigations, one learns that he was personally involved in the dispensation of justice.⁷⁵

⁷⁵ Asser, *Life*, ch. 106 (edited by Stevenson, *Asser's Life*, p. 93, and translated by Keynes and Lapidge, *Alfred the Great*, p. 109).

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He would carefully look into nearly all the judgements which were passed in his absence anywhere in his realm, to see whether they were just or unjust (*iusta aut etiam iniusta*); and if he could identify any corruption in those judgements he would ask the judges concerned politely, as is his wont...why they had passed so unfair a sentence - whether through ignorance or because of some other malpractice (that is to say, either for love or fear of the one party or for hatred of the other, or even for the sake of a bribe).

With deliberate parallelism, these same preoccupations are emphasized in his translation of the passages from Exodus. In dealing with the provisions relating to homicide and ambush (21:12-14), Alfred makes an interpolation distinguishing between intentional acts, and those which occur through self-defence, duress or negligence. After stating that intentional homicide is to be punished by death, the Vulgate continues: 'qui autem non est insidiatus sed Deus illum tradidit in manus eius constituam tibi locum quo fugere debeat'. The Old English modifies this: 'Se ðe hine pone nedes ofsloge oððe unwillum, oððe ungewealdes, swelce hine God sende on his handa...' (Bib. Int. 13), thereby interpreting the Latin text and qualifying it. The Vulgate continues: 'si quis de industria occiderit proximum suum...' (Ex. 21:14), and this is translated into characteristic Old English idiom: 'Gif hwa ðonne of giernesse 7 gewealdes ofslea his pone nehstan...', again making it clear that deliberate homicide should not be confused with death caused in

mitigating circumstances or by negligence. The concept of intention in homicide is addressed again in Bib. Int. 25. Having raised the matter of killing a thief at his burglary during the night, the Latin continues: 'quod si orto sole hoc fecerit homicidium perpetravit et ipse morietur si non habuerit quod pro furto reddat uenundabitur' (Ex. 22:3). The Old English translation, however, qualifies the matter: 'Gif he siððan æfter sunnan upgonge þis deð, he bið mansleges scyldig, ⁊ he ðonne self swelte buton he nieddæda wære' (Bib. Int. 25).⁷⁶ Similarly, while Ex. 21:16 states: 'qui furatus fuerit hominem et uendiderit eum conuictus noxae morte moriatur', Alfred tempers this to allow for extenuating factors: 'Se ðe frione forstele ⁊ he hine bebycgge, ⁊ hit onbestæled sie þæt he hine bereccan ne mæge...' (Bib. Int. 15). The possibility of explaining one's actions is at least envisaged by Alfred, although this may simply be an inherent part of the legal process. These interpolations amount to a primitive treatment of the

⁷⁶ Alfred takes the second half of verse 3 ('si non habuerit quod pro furto reddat uenundabitur') as modifying verse 1: 'si quis furatus fuerit bouem aut ouem et occiderit uel uendiderit quinque boues pro ino boue restituet et quattuor oues pro una oue'. There is insular evidence to suggest that a variant reading in the source may have been responsible for this, as the Irish *Liber ex lege Moysi* also agrees with Alfred's translation. Some of the other discrepancies in this passage may also have occurred for the same reason. Alfred omitted the words 'aut ouem' from his translation of verse 1, and significantly these words are also missing from a ninth-century Theodulfian recension of the Vulgate (Paris, Bibliothèque Nationale, MS Latin 11937).

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concept of *mens rea* in homicide, for there is a recognition that under some circumstances it is permissible to take life, and these can be defined at law. It is a quality of legal thought not found in the Biblical text, and it is indicative of Alfred's desire to address problems in a way that would be useful to those in positions of judicial authority. To take a strict liability view of homicide means by definition that, irrespective of any mitigating circumstances, an accused will be found guilty if it can be proved that he committed the act (irrespective of intention). By defining acceptable mitigating circumstances, Alfred was indicating a need for caution, and offering advice to those of his officials involved in the settlement of such disputes. The law-codes may not have been cited directly in dispute resolution, but if such concepts as these were digested by the king's officials, the quality of adjudication would certainly have been improved.⁷⁷

Alfred's treatment of other biblical commands also provides evidence to suggest that he was concerned about justice. The verses in Ex. 23:6-7 were heavily modified by Alfred. The Latin reads: 'non declinabis in iudicio pauperis mendacium fugies insontem et iustum non occides

⁷⁷ It is worth noting that the question of intention (*geweald*) appears again in the legal provisions of Alfred's code, where questions of culpability are considered in the context of negligence with a spear (*Alf.* 36).

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quia auersor impium'. Alfred turns this into a more general and expansive stipulation about judgement, part of which explains the omission of Ex. 23:3 ('pauperis quoque non misereberis in negotio'), which may have seemed unduly harsh as a statement taken on its own, but which is more palatable when placed in the context of impartial judgement.

Dem þu swiþe emne. Ne dem þu oþerne dom þam
welegan, oþerne þam earman; ne oþerne þam
lioþran, ⁊ oþerne þam laðran ne dem þu.
[Bib. Int. 43]

These injunctions reflect well the concerns which Asser attributed to Alfred, namely a desire to constrain those prone to partisan decisions because of 'love or fear of the one party or...hatred of the other', and the prevention of unjust decisions caused by bribery (which is the subject of Ex. 23:8). The imperative mood would have been especially germane, given that the intended recipients of this code may well have been the king's officials in positions of judicial responsibility.

This Biblical Introduction is the earliest, and most extensive, continuous prose translation of the Bible to have survived from Anglo-Saxon England. There may, of course, have been others made before this which have not survived. Bede expressed a desire to see works of scripture, and parts of the liturgy, translated into English; and from his letter to Archbishop Egbert one learns that he translated the Creed and the Lord's Prayer

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for the instruction of the 'ignorant'.⁷⁸ Furthermore, on his deathbed, Bede allegedly began a translation of St. John's Gospel which has not survived, though at best this is likely to have been a running gloss and not a continuous prose rendering.⁷⁹ It is therefore quite possible that Alfred's Biblical Introduction represented a very real advance in the dissemination of scripture in the vernacular, and this in turn could be regarded as further evidence of the fundamentally didactic purpose of the Biblical Introduction.

There was certainly a precedent for linking Mosaic law with temporal injunctions in the early medieval period. As Felix Liebermann pointed out:⁸⁰

Mosaic law...had already been quoted by many Teutonic writers, not only in the canons of the Church, but also in secular laws and jurisprudence. Here, however, it is not merely a few single lines, but more than two long chapters, in their continuous sequence, which were embodied into a royal code, and put, not in a casual, indifferent place, but at the very beginning of the whole.

⁷⁸ Plummer, ed., *Venerabilis Baedae Opera Historica*, I, p. 409. It is translated in *EHD*, no. 168, p. 801.

⁷⁹ See Cuthbert's letter *De obitu Baedae* in Plummer, ed., *Venerabilis Baedae Opera Historica*, I, p. clxi. Cf. Ross, 'A connection between Bede and the Anglo-Saxon gloss to the Lindisfarne Gospels?', pp. 492-93.

⁸⁰ Liebermann, 'King Alfred and Mosaic Law', p. 23. Patrick Wormald examines all the possible sources and analogues for Alfred's Biblical Introduction in his forthcoming book. The discussion which follows has benefitted greatly from access to Wormald's analysis, and from his extensive references to relevant material.

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One of the earliest works combining Mosaic and secular law is the *Collatio legum Romanorum et Mosaicarum*, which contrasts Mosaic imperatives on certain subjects (such as homicide, adultery, false witness, and cattle theft) with excerpts from the writings of the Roman jurists and the Hermogenian and Gregorian codes.⁸¹ Although its actual purpose is debatable, clearly it was not a work of practical legal relevance, and there is no evidence to suggest that Alfred knew of its existence, even though it seems to have been known by Hincmar of Rheims.⁸² Book Five of Isidore's *Etymologiae* opens its treatment of law with a summary of the history of law-giving, beginning with Moses;⁸³ but the work most likely to have been known to Alfred was the Irish *Liber ex lege Moysi*, written c. 700.⁸⁴ This work certainly has some similarities with Alfred's Biblical Introduction, but the extracts from

⁸¹ The text is edited, with a facsimile of one of the manuscripts, by Hyamson, ed., *Mosaicarum et Romanarum Legum Collatio*. He dated the *Collatio* to 390x438 (p. xlviii), and discussed its possible function on pp. xl-xlii.

⁸² See Dirkson, 'Über die *Collatio Legum Mosaicarum et Romanarum*. Anhang: Hinkmar, Erzbischof von Rheims als Kenner der Quellen des römischen Rechts', II, pp. 130-41.

⁸³ Lindsay, ed., *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri XX*. Book V ('De Legibus et Temporibus') begins: 'De autoribus legum. Moyses gentis Hebraicae primus omnium diuinas leges sacris litteris explicauit'.

⁸⁴ This work has not yet been edited, but an edition by Raymund Kottje is in preparation. For a general discussion of the importance of the Old Testament in Irish legal thought, see Ó Corráin, Breatnach and Breen, 'The laws of the Irish', pp. 394-413.

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Mosaic law in *Alfred-Ine* are much more selective than those in the Irish work.⁸⁵

The arguments for use by Alfred of any one analogue seem inconclusive. The inherent importance of Mosaic law in the Christian tradition, because it emanated directly from God and was endorsed by God incarnate, must then (as now) have been manifest. It is not necessary to search for a source to explain Alfred's 'inspiration', nor must one see the inclusion of the Mosaic extracts as an 'ideological statement' obliging the Anglo-Saxons to live as a 'new chosen people'. Certainly the introduction has a literary character, insofar as it is not characteristically legal, but this does not prove that it was irrelevant to the law in its practical application. On the contrary, through his discussion of synods, Alfred deliberately created a link between the law laid down by God and that enacted by man. The combining of a didactic function with a practical one is entirely characteristic of the Alfredian compositions, and it is also consistent with his other well-attested attributes: a love of learning and a desire to achieve *sapientia*; a personal

⁸⁵ For details see Wormald, *The Making of English Law* (forthcoming). In 'Le *Liber ex lege Moysi* et les tendances bibliques du droit canonique irlandais', Fournier suggested: '...or si l'on ne tient pas compte d'omissions peu nombreuses, c'est la même série de textes de l'Exode qui figure dans le *Liber ex lege Moysi*, certainement antérieur aux Lois d'Alfred. Aussi n'est-il pas invraisemblable de penser que l'auteur du prologue anglo-saxon s'est largement inspiré du *Liber ex lege Moysi*' (p. 230).

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role in the translation of pertinent texts necessary to the acquisition of such learning; and the direct intervention in judicial affairs to ensure that those exercising royal authority did so in a manner befitting their offices.

ALFRED'S LAW-CODE AND THE INE APPENDIX

Having examined the rubrics and Biblical Introduction, one arrives at the most important aspect of Alfred's compilation, namely the law. The textual evaluation of Alfred's law-code and the Ine appendix is an important preliminary to any discussion of the substantive legal content of the codes, for in order to get a sense of the chronological development of Anglo-Saxon law, one must first ascertain whether the Ine appendix was modified by Alfred for inclusion in his law-code, and hence whether or not it is good evidence of West Saxon custom in the seventh century. The natural starting point for any such discussion must be what Alfred says about his sources, and the methods which he used when compiling this codification (Bib. Int. 49.9).⁸⁶

Ic 8a Ælfred cyning 8as togædere gegaderode,
7 awritan het, monege 8ara 8e ure foregengan
heoldon, 8a 8e me licodon; 7 manege 8ara 8e
me ne licodon ic awearp, mid minra witenas
ge8eahte, 7 on oðre wisan bebead to
healdanne.

⁸⁶ For a translation of this passage, see Keynes and Lapidge, *Alfred the Great*, p. 164.

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For ðam ic ne dorste geðristlæcan þara minra
awuht fela on gewrit settan, for ðam me was
uncuð hwæt þas ðam lician wolde ðe æfter us
wæren; ac ða ðe ic gemette awðer, oððe on
Ines dæge, mines mages, oððe on Offan Mercna
cyninges, oððe on Æpelbryhtes, þe ærest
fulluhte onfeng on Angelcynne, þa ðe me
ryhtoste ðuhton, ic þa heron gegaderode, ⁊ þa
oðre forlet.

On the face of it, Alfred's description of gathering together law which pleased him, from the codes of his predecessors (*foregengan*), aptly describes his treatment of the laws of Æthelberht and (so far as one can tell) those of Offa. The Ine appendix does not look like a selection, not least because it retains its original prologue, but Alfred's assertion that he omitted law which did not please him is so unambiguous that Liebermann was forced to conclude:⁸⁷

Auch bei freiester Auslegung lässt sich
Alfred nur so verstehen, dass er von Ine eine
blosse Auswahl mittheile.

It is not necessary to regard Bib. Int. 49.9 as a description of how Alfred handled the material in the Ine appendix. There is ample evidence to suggest that Alfred used and modified Ine's law when composing his own code, just as he claims to have used and modified the laws of Æthelberht and Offa. The diction, syntax and substance of the Ine appendix all suggest an unmodified seventh century provenance, though the internal contradictions within the code may indicate that it was compiled from

⁸⁷ Liebermann, 'Ueber die Gesetze Ines von Wessex', p. 23.

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separate exemplars.⁸⁸ Thus the possibility must be considered that Alfred never intended the Ine appendix to be physically joined to his own code; this hypothesis is tenable if the rubrics were not original, and it also removes the problem of contradictions between Alfred's code and the Ine appendix. Only the textual transmission speaks against this scenario.

Before examining the appendix in detail, it would be as well to consider Alfred's treatment of his other known sources: the codes of Æthelberht and Offa. The law-code of King Offa of Mercia is, unfortunately, lost; and attempts to find traces of it in Alfred's code have been largely unsuccessful. As early as 1832, Sir Francis Palgrave addressed the matter directly.⁸⁹

There was no incorporate union of the Saxon kingdoms, no assembly possessing binding and controlling power of legislation over all the kingdoms of England: it is therefore probable that there were two promulgations of Alfred's laws, one statute for the West Saxons, and to which the laws of Ina were appended, and another for Mercia, since lost, and to which the laws of Offa were in like manner annexed.

This presupposes that Alfred promulgated his code as binding law for the Mercians, which is by no means certain. For while his use of the Kentish and Mercian codes may reflect his political aspirations, Alfred

⁸⁸ These contradictions are discussed below, pp. 258-60.

⁸⁹ Palgrave, *The Rise and Progress of the English Commonwealth*, I, p. 47.

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nevertheless promulgated his law-code as king of the West Saxons ('Westseaxna cyning'), and not as king of the Anglo-Saxons, a royal style which he adopted in some diplomas after the general submission of 886.⁹⁰ Turk likewise dismissed Palgrave's suggestion summarily.⁹¹

There is no evidence of any sort for such an assumption, and the fact that Ine's Laws occupy such a position as they do, affords...no ground for allotting to Offa's Laws a like place in a supposititious publication of which neither in Ms., nor ancient translation, nor ancient tradition any trace whatever can be found.

Better evidence of Mercian influence is found when one examines the language of Alfred's code, for two words are used which occur elsewhere only in a Mercian context.⁹² They cannot, however, be construed as conclusive evidence of borrowing from Offa's law, since Alfred had several

⁹⁰ ASC s.a. 886. In S346 (Worcester, 889) Alfred is styled 'rex Anglorum Saxonum'; in S347 (Gloucester, 891) he is styled 'Anglorum et Saxonum rex'; and in S348 (Wilton, 892) he is styled 'Anglo Saxonum rex'. In three undated diplomas (S354-56) he is styled variously 'Anglorum Saxonum rex', 'Angol Saxonum rex' and 'Angul Saxonum rex'. Asser also uses the latter style to describe Alfred. The fact that these styles occur in diplomas emanating from different centres suggests that the 'usage is genuinely Alfredian' (Keynes and Lapidge, *Alfred the Great*, pp. 227-28, n. 1).

⁹¹ Turk, ed., *The Legal Code*, pp. 40-41. Cf. Schmid, ed., *Gesetze*, pp. xl-xli.

⁹² Whitelock, et al., eds., *Councils and Synods*, p. 18, n. 2. The first word, 'boldgetal' (*Alf.* 37), occurs elsewhere only in the translation of Gregory's *Dialogues*, made by Alfred's advisor Bishop Wærferth of Worcester (see Asser, *Life*, ch. 77). The other word, 'lefness' (*Alf.* 8 and *Alf.* 20) is found elsewhere only in the Old English translation of Bede, another work with signs of Mercian provenance and a considerable Mercian vocabulary. The word was changed to 'leafe' in the later manuscripts of *Alfred-Ine*.

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Mercian advisors at his court who could have been actively involved in the preparation of his law-code.⁹³ Another compelling (though not conclusive) argument was put by Keynes and Lapidge, who suggested that the provision on entail of bookland in Alfred's law (*Alf.* 41) may have emanated from the lost Offa code, since charters which explicitly restrict the owner's power of alienation first appear in the reign of King Offa (757-96).⁹⁴ In his forthcoming paper on the lost Offa law-code, Patrick Wormald addresses this argument and concludes that other aspects of property law took centuries to transfer from diploma to law-code, and that Alfred may just as readily have found inspiration for his law in an entailed bequest of his grandfather, which he mentioned in his will (a possibility which Keynes and Lapidge also envisaged).⁹⁵ The point is a good one; that Egbert entailed land at all suggests that the practice was already established in West Saxon custom long before Alfred promulgated his law on the subject. Since there is no other evidence to

⁹³ In ch. 77 of the *Life*, Asser stated that Alfred summoned four native Mercians to his court: Wærferth, Bishop of Worcester; Plegmund, Archbishop of Canterbury; and two chaplains, Werwulf and Æthelstan (see Stevenson, ed., *Asser's Life*, p. 93, and Keynes and Lapidge, *Alfred the Great*, pp. 92-93).

⁹⁴ Keynes and Lapidge, *Alfred the Great*, p. 309, n. 24.

⁹⁵ Wormald, 'In Search of King Offa's "Law-Code"' (forthcoming). The text of Alfred's will is included in Harmer, ed., *Select English Historical Documents of the Ninth and Tenth Centuries*, XI, p. 19, lines 8-15.

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suggest a Mercian origin for Alfred's provision on entail, the conjecture that Alf. 41 originated in Offa's law-code cannot be sustained.

More interesting is the possible connection between Offa's law-code, which was mentioned by Alfred and perhaps alluded to by Alcuin, and the 786 capitulary included in the report of the papal legates to Pope Hadrian.⁹⁶ From this report (by Bishop George of Ostia and Bishop Theophylact of Todi) one learns that the capitulary was originally decreed in Northumbria, but it was subsequently read out both in Latin and in English ('tam Latine quam theodisce') at a council convened by King Offa, who, together with the Mercians, agreed to obey its admonitions.⁹⁷ The opinion that 'this capitulary may be the law of Offa to which King Alfred referred' was first expressed by Patrick Wormald;⁹⁸ it was subsequently considered by Dorothy Whitelock, who accepted that 'this

⁹⁶ In a letter of 797, Alcuin advised the Mercian ealdorman Osbert 'to admonish all the race of the Mercians diligently to observe the good, moderate and chaste customs, which Offa of blessed memory established'. The text is edited by Duemmler, ed., *Epistolae Karolini Aevi II*, no. 122, and it is translated in *EHD*, no. 202, p. 855. Dr Catherine Cubitt has observed that 'Alcuin frequently used the word *mores* in admonishing his correspondents to reform their morals; since his meaning is invariably "morals" or "customs", its usage here to mean a written code of behaviour would be atypical' (see *Anglo-Saxon Church Councils*, p. 324, n. 227). This does not, however, account for the strongly prescriptive sense of 'institut'.

⁹⁷ The text of the capitulary is edited by Duemmler, no. 3, pp. 19-29; it is translated by Johnson, *A Collection of the Laws and Canons of the Church of England*, I, pp. 264-85.

⁹⁸ Wormald, 'Lex Scripta and Verbum Regis', p. 112, n. 40.

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synod may have been one of those in Alfred's mind when he refers to synods throughout England'. Whitelock qualified her affirmation, however, by pointing out that the similarities between the legatine capitulary and Alfred's code could be explained by the fact that 'the lost laws of Offa...were influenced by the decrees of the Legatine synod, and that it was from Offa's laws that Alfred took the parts of the code which remind one of the synod's decrees'.⁹⁹ Both of these alternatives are equally viable, since Alfred's statement is decidedly ambiguous. Turk recognized this, drawing attention to the 'indefinite and inexact character of this whole paragraph' (Bib. Int. 49.9), and pointing out that the 'mention of the laws of the three kings is, to some extent, a repetition of what is said at the beginning of the paragraph'.¹⁰⁰ This is an astute observation. As already suggested, the precise meaning of 'synoðbec' is unclear, although Alfred was certainly making an association between the laws gathered from synod-books and those extracted from the codes of his predecessors. In order to make any sense of Alfred's statement, one must look at it in context. With the possible exception of the 786 legatine capitulary, there is no evidence that Alfred used synodal decrees in the compilation of his

⁹⁹ Whitelock *et al.*, eds., *Councils and Synods*, I, p. 18.

¹⁰⁰ Turk, ed., *The Legal Code*, p. 39.

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law-code. Turk seems to have accepted this, for despite referring to 'Synodical Laws' as one of Alfred's sources, he also wrote:¹⁰¹

Æ. [Alfred] seems to mean by them all the laws *þe ure foregengan heoldon*. The laws of the three kings, though not the resolutions of ecclesiastical synods, were still both in their origin and content largely ecclesiastical and, in an indefinite way, Æ. includes them with the rest.

Liebermann obviously was not convinced by this, but his own explanation is vague and unhelpful. He acknowledged: 'Diesen...Quellenstoff vermag im übrigen die heutige Kritik bei Af ebenfalls nicht auszuschneiden', and he went on to argue:¹⁰²

Gekannt zu haben gibt Ælfred...an eine Menge einzelner Strafgesetze, die, auf Witena gemoten im 7.8.9. Jahrhundert beschlossen, in Synodal bücher eingetragen worden seien. Dass Ælfred diese...Quelle in Kodex benutzt habe, sagt er zwar nicht deutlich. Es ist aber an sich wahrscheinlich.

It is impossible to know precisely what meaning Alfred intended to convey by the unique word 'synoðbec'; only the 786 decree looks anything like a synodal source, and this is why the 'modern critics' mentioned by Liebermann have had such difficulty identifying this material in the code. Yet it is not difficult to see what Alfred was hoping to do by claiming that his sources were contained in 'synod-books'. In his potted history of Christian law-

¹⁰¹ Turk, ed., *The Legal Code*, p. 39.

¹⁰² Liebermann, ed., *Gesetze III*, pp. 33-34 (23).

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giving, synods hold a prominent position; indeed they are the link between the God-given Mosaic law which was ratified by Christ, and the decrees of the Apostolic and later synods which interpreted that law for different contexts. Alfred drew a deliberate parallel between the Apostolic synods (convened to interpret the law for the Gentiles), and the 'monega seonoðas geond ealne middangeard gegaderode, ⁊ eac swa geond angelcyn' which fixed monetary compensation for human offences. Again Turk also recognized this.¹⁰³

The author...wishes to construct, rather than to imagine, the bridge that shall connect the Apostolic injunctions with his own ordinances, just as he had carefully joined the former to the Mosaic commandments.

Alfred not only saw his own code falling within a tradition of Christian law-giving, but also those promulgated by his predecessors; and this may be one of the reasons why he chose to base his own law-code on previous enactments. One could also argue that the king did not attempt to draw a clear distinction between royal councils and ecclesiastical synods, because he did not perceive any such distinction, just as we are faced with the 'unavoidable' problem that 'a majority of the gatherings...described as 'church councils' exhibit a degree of royal or lay participation which might properly exclude them from consideration as such'.¹⁰⁴

¹⁰³ Turk, ed., *The Legal Code*, p. 32

¹⁰⁴ Keynes, 'Anglo-Saxon Church Councils', p. 584.

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Even if one supposes that all the possible Mercian elements in the law-code are derived from the lost ordinance of Offa, Alfred's statement that he used his sources selectively, and rejected those provisions which did not please him, would seem to be accurate: the influence of the Offa source would be limited to *Alf.* 8, 20, 37 and 41. If one also accepts that Offa used the 786 capitulary (whether or not in its entirety), one can add to this list Alfred's provisions on treason (*Bib. Int.* 49.7 and *Alf.* 4-4.2) and the denial of heirs born to nuns (*Alf.* 8-8.3). The capitulary also contains a chapter on the importance of oaths (*cap.* XVIII), a subject given considerable prominence in Alfred's code (*Alf.* 1-1.8). The matters of tithes, usury and judgement are also mentioned in both the capitulary and the Biblical Introduction to the law-code. These similarities are unmistakable. Alfred's famous law on treason has no known antecedent in the extant corpus of Anglo-Saxon laws, yet the decree of the papal legates reads as follows.¹⁰⁵

In necem regis nemo communicare audeat, quia christus Domini est: et si quis tali sceleri adhaeserit, si episcopus est, aut ullus ex sacerdotali gradu, ex ipso detrudatur, et a sancta hereditate deiciatur, sicut Iudas ab apostolico gradu eiectus est: et omnis quisquis tali sacrilegio assenserit, aeterno anathematis uinculo interibit, et Iudae traditori sociatus, sempiternis cremabitur incendiis.... (*cap.* XII)

¹⁰⁵ Duemmler, ed., *Epistolae Karolini Aevi II*, p. 24.

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The comparison in this passage of the traitor with Judas recalls Bib. Int. 49.7, where the only crime not able to be remedied by a payment of monetary compensation is treason to a lord (*hlafordsearwe*) because 'Almighty God adjudged none for those who despised him. Nor did Christ, the son of God, adjudge any for him who gave him [over] to death' ('ðe God ælmihtig þam nane ne gedemde þe hine oferhogdon. Ne Crist, Godes sunu, þam nane ne gedemde þe hine to deað sealde'). This would have been an appropriate subject to address in Offa's law-code, given that Offa's predecessor, Æthelbald, was killed by his own bodyguard in 757.¹⁰⁶ Equally striking is the capitular prohibition (*cap. XVI*) which resembles Alfred's denial of illicit heirs born to nuns (*Alf. 8-8.3*), a law which also has no known antecedent in previous ordinances.¹⁰⁷

Adulterinos namque filios ac sanctimonialium
auctoritate apostolica spurios et adulteros
iudicamus.... Perpendite namque, si ab
apostolo hereditas seculi secluditur,
dicente scriptura: 'Non enim heres erit
filius ancille cum filio liberae'.

Significantly, *Alf. 8* contains one of the Mercian words discussed above ('lefness'), and this may further suggest that the similarities between the law-code and the

¹⁰⁶ *ASC s.a. 755* (for 757) and *Historia Regum s.a. 757* (translated in *EHD*, p. 266). Oswulf of Northumbria was also murdered by his household in 758 (*ASC s.a. 757* for 758); and Cynewulf was killed by Cyneheard in 786 (*ASC s.a. 784* for 786), the year of the legatine visit.

¹⁰⁷ Duemmler, *Epistolae Karolini Aevi II*, p. 25.

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capitulary are not merely coincidental.⁸⁷ Finally, chapter thirteen of the legatine decree closely resembles Alfred's interpolation on judgement in the Biblical Introduction (Bib. Int. 43, quoted above, p. 232).⁸⁸

Decima tertia admonitio fuit, ut potentes et diuites iusta iudicia statuunt, nec personam diuitis accipiant, nec pauperes contemnant, neque a rectitudine iudiciorum deuiant, nec munera super innocentes accipiant, sed in ueritate et iusticia dicente propheta: 'Iuste iudicate, filii hominum'.

These similarities cannot, of course, help one to decide conclusively whether Offa employed parts of the 786 capitulary in his code, or whether King Alfred simply used the capitulary and attributed it to the Mercian king. However, one thing is certain: Alfred did not incorporate the complete Offa code into his own, any more than he adopted the whole of Æthelberht's code. It is only the Ine appendix which stands out in this respect.

Unlike Offa's law, the code of King Æthelberht of Kent has survived in a single copy; although, not surprisingly, the language of the code has been modernized by the scribe who copied it into the twelfth-century *Textus Roffensis*. Fortunately the substance of the code appears largely original, and thus one is better

⁸⁷ In his letter to King Æthelbald of Mercia (746x47), Boniface complains about fornication with nuns; see Haddan and Stubbs, eds., *Councils and Ecclesiastical Documents*, III, pp. 350-56 (translated in *EHD*, no. 177, pp. 817-22).

⁸⁸ Duemmler, ed., *Epistolae Karolini Aevi II*, p. 24.

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placed to assess what Alfred used and what he rejected. The most obvious similarity between the two codes is a list of tariffs for bodily injury. The following table contrasts the provisions of the two codes, illustrating the discrepancies.

TABLE 16
TARIFFS FOR BODILY INJURY

INJURY	ÆTHELBERHT	ALFRED
1. PULL HAIR	50 sc. (33)	---
2. CUT TO THE BONE	3 s. (34)	---
3. DAMAGE BONE	4 s. (35)	---
4. FRACTURE SKULL: OUTER COVER	10 s. (36)	15 s. (44.1)
5. FRACTURE SKULL: BOTH BONES	20 s. (37)	30 s. (44)
6. DISABLE SHOULDER	30 s. (38)	30 s. (53)
7. DESTROY HEARING: EITHER EAR	25 s. (39)	---
8. WOUND SCALP	---	1 s. (45)
9. WOUND FOREHEAD	---	2 s. (45.1)
10. SEVER EAR	12 s. (40)	30 s. (46)
11. PIERCE EAR	3 s. (41)	---
12. LACERATE EAR	6 s. (42)	---
13. MAKE DEAF	---	60 s. (46.1)
14. KNOCK OUT EYE	50 s. (43)	66 s., 6 p. + one-third of a penny (47, 71)

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15. IF EYE IN THE HEAD BUT BLIND	---	subtract one- third
16. DISFIGURE MOUTH OR EYE	12 s. (44)	---
17. PIERCE NOSE	9 s. (45)	---
18. PIERCE ONE CHEEK	3 s. (46)	---
19. PIERCE BOTH CHEEKS	6 s. (47)	---
20. SEVER NOSE	---	60 s. (48)
21. LACERATE NOSE: PER WOUND	6 s. (48)	---
22. PIERCE NOSE	6 s. (49)	---
23. SMASH CHIN-BONE	20 s. (50)	12 s. (50.1)
24. TEETH: FRONT INCISORS	6 s. (51) front four	8 s. (49)
25. TEETH: CANINES	4 s. (51)	15 s. (49.2)
26. TEETH: FIRST BICUSPIDS	3 s. (51)	---
27. TEETH: SECOND BICUSPIDS & MOLAR	1 s. (51)	3 s. (49.1)
28. FRACTURE JAW	---	15 s. (50)
29. PIERCE WINDPIPE	---	12 s. (51)
30. REMOVE TONGUE	---	same as eye
31. INJURE POWER OF SPEECH	12 s. (52)	---
32. INJURE COLLAR BONE	6 s. (52.1)	---
33. PIERCE ARM	6 s. (53)	---
34. FRACTURE ARM	6 s. (53.1)	15 s. (54) if above elbow
35. FRACTURE RADIUS AND ULNA (?)	---	30 s. (55)

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36. SEVER THUMB	20 s. (54)	30 s. (56)
37. THUMB NAIL	3 s. (54.1)	5 s. (56.1)
38. SEVER FOREFINGER	9 s. (54.2)	15 s. (57)
39. NAIL	1 s. (55)	3 s. (57)
40. SEVER MIDDLE FINGER	4 s. (54.3)	12 s. (58)
41. NAIL	1 s. (55)	2 s. (58)
42. SEVER RING FINGER	6 s. (54.4)	17 s. (59)
43. NAIL	1 s. (55)	4 s. (59)
44. SEVER LITTLE FINGER	11 s. (54.5)	9 s. (60)
45. NAIL	1 s. (55)	1 s. (60)
46. DISFIGUREMENT (?) (SLIGHT)	3 s. (56)	---
47. DISFIGUREMENT (?) (GREATER)	6 s. (56)	---
48. STRIKE NOSE WITH FIST	3 s. (57)	---
49. IF IT BRUISES	1 s. (58)	---
50. IF BLOW RECEIVED WITH HAND	1 s. (58.1)	---
51. IF BLACK BRUISING OUTSIDE CLOTHING	30 sc. (59)	---
52. IF BLACK BRUISING UNDER CLOTHING	20 sc. (60)	---
53. STOMACH WOUND	12 s. (61)	30 s. (61)
54. PIERCE STOMACH THROUGH	20 s. (61.1)	20 s./hole (61.1)
55. IF MEDICAL TREATMENT REQ'D	30 s. (62)	---
56. IF SEVERE WOUND (?)	30 s. (63)	---

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57. GENERATIVE ORGAN DESTROYED	wergild x3 (64)	---
58. GENERATIVE ORGAN PIERCED THROUGH	6 s. (64.1)	---
59. GENERATIVE ORGAN PIERCED PARTIALLY	6 s. (64.2)	---
60. TESTICLES	---	80 s. (65)
61. FRACTURE THIGH	12 s. (65)	30 s. (62.1)
62. IF LAME AS RESULT	feud (65 1)	---
63. FRACTURE RIB: SKIN UNBROKEN	3 s. (66)	10 s. (70)
64. FRACTURE RIB: BONE REMOVED	---	15 s. (70)
65. PIERCE THIGH THROUGH	6 s. (67)	30 s. (62)
66. PIERCE THIGH 1" DEEP	1 s. (67.1)	---
67. PIERCE THIGH 2-3" DEEP	2 s. (67.1)	---
68. PIERCE THIGH OVER 3" DEEP	3 s. (67.1)	---
69. PIERCE LOWER LEG BELOW KNEE	---	12 s. (63)
70. FRACTURE LOWER LEG BELOW KNEE	---	30 s. (63.1)
71. WOUND SINEW	3 s. (68)	6 s. (76)
72. SEVER FOOT	50 s. (69)	66 s., 6 p. + one-third of a penny (71)
73. SEVER BIG TOE	10 s. (70)	20 s. (64)
74. SEVER OTHER TOES	50% of the sum for fingers (71)	(below)
75. SECOND TOE	(ie.) 4½ s	15 s. (64.1)

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76. MIDDLE TOE	(ie.) 2 s	9 s. (64.2)
77. FOURTH TOE	(ie.) 3 s	6 s. (64.3)
78. LITTLE TOE	(ie.) 5½ s	5 s. (64.4)
79. SEVER NAIL OF BIG TOE	30 sc. (72)	---
80. SEVER OTHER TOE NAILS	10 sc. (73)	---
81. SEVER HAND AND FOREARM	---	80 s. (66)
82. FRACTURE PELVIS	---	60 s. (67)
83. PUSH IN PELVIS	---	15 s. (67.1)
84. PIERCE PELVIS	---	30 s. (67.2)
85. WOUND SHOULDER	---	80 s. (68)
86. BREAK HAND	---	20 s. (69)
87. SEVER HALF OF HAND	---	40 s. (69.1)
88. SEVER EYE, HAND OR FOOT	---	66 s., 6 p. + one-third of a penny (71)
89. SEVER LOWER LEG WITH KNEE	---	80 s. (72)
90. FRACTURE SHOULDER	---	20 s. (73)
91. SEVER SHOULDER AND REMOVE BONE	---	15 s. (74)
92. BREAK GREAT SINEW	---	12 s. (75)
93. IF LAME AS A RESULT	---	30 s. (75.1)
94. BREAK TENDONS IN NECK	---	120+ s. (77)

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76. MIDDLE TOE	(ie.) 2 s	9 s. (64.2)
77. FOURTH TOE	(ie.) 3 s	6 s. (64.3)
78. LITTLE TOE	(ie.) 5½ s	5 s. (64.4)
79. SEVER NAIL OF BIG TOE	30 sc. (72)	---
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84. PIERCE PELVIS	---	30 s. (67.2)
85. WOUND SHOULDER	---	80 s. (68)
86. BREAK HAND	---	20 s. (69)
87. SEVER HALF OF HAND	---	40 s. (69.1)
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92. BREAK GREAT SINEW	---	12 s. (75)
93. IF LAME AS A RESULT	---	30 s. (75.1)
94. BREAK TENDONS IN NECK	---	120+ s. (77)

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It is clear from this table that the similarities of content between these two lists of compensation are sufficient in number to support the opinion that the list in Alfred's law-code was based upon that of Æthelberht. In design the two lists follow one another quite closely, beginning at the head and moving through the body to the foot; Alfred, however, does not observe this layout rigidly, and he added several additional chapters at the end of his list. Similarly, he inexplicably omitted some of the details from Æthelberht's law (such as compensation payable for toe nails: nos 79-80), and several of the more general provisions (nos 47, 56, 66). Naturally Alfred adjusted the value of the Kentish compensation to bring it into line with West Saxon currency. Æthelberht's law-code ante-dates the regular use of coinage in England, and, as Professor Grierson has shown, the shilling of Æthelberht's code was not a coin but a unit of gold (roughly equivalent to the Frankish gold *tremissis*, the only coin then current in England). The term 'sceat' is also a weight of gold equal to one-twentieth of a gold shilling. The Kentish gold shilling weighed twenty Troy grains; the sceat, one Troy grain.¹¹⁰ In ninth-century Wessex the shilling was also a unit of

¹¹⁰ Grierson, 'La fonction sociale de la monnaie en Angleterre aux VIIe-VIIIe siècles', pp. 350-55. Cf. Grierson and Blackburn, *Medieval European Coinage I: The Early Middle Ages*, pp. 15 and 156-59. There is also a useful discussion in Sawyer, *From Roman Britain to Norman England*, p. 172.

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account, equivalent to five silver pennies.¹¹¹ The average weight of a penny was 20 Troy grains (of silver). Given that, as Lyon has pointed out, one fine gold shilling was equivalent to ten silver shillings, it follows that one West Saxon shilling (100 Troy grains of silver) was worth half as much as one Kentish gold shilling (20 Troy grains of gold, which, at a gold to silver ratio of 10:1, would be equivalent to 200 Troy grains of silver).¹¹² One Kentish sceat was worth half one silver penny or one-fortieth of an ounce of silver. Thus, in order to compare the prescribed compensations for bodily injury in the codes of Æthelberht and Alfred, one can assume an exchange rate of one Kentish shilling equals two West Saxon shillings.¹¹³

¹¹¹ Grierson and Blackburn, *Medieval European Coinage I*, p. 157.

¹¹² Lyon, 'Some problems in interpreting Anglo-Saxon coinage', p. 177 and 189. On the number of pennies equivalent to a Kentish gold shilling, see Grierson and Blackburn, p. 157.

¹¹³ In this connection, see Keynes and Blackburn, *Anglo-Saxon Coins*, p. 14.

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What one discovers is that Alfred's provisions agree with those of Æthelberht on four occasions (nos 41, 71, 73, 77), and that Alfred increased the compensation due on fourteen occasions (nos 10, 25, 27, 34, 39, 40, 42, 43, 53, 61, 63, 65, 75, 76), and likewise he decreased it on fourteen occasions (nos 4, 5, 6, 14, 23, 24, 36, 37, 38, 44, 45, 54, 72, 78). It is difficult to discern any pattern in these increases and reductions. In accordance with his desire to limit the feud (cf. *Alf.* 5-5.4, *Alf.* 42-42.7), Alfred omitted *Abt.* 65.1 (no. 62). He increased Æthelberht's compensations for fractures to arms, thighs, ribs and toes; in a time of potential military invasion this makes sense, for without toes it is difficult to walk, and with fractured arms and legs it is difficult to do anything, let alone to fight. However Alfred's reduction of compensation for disabled shoulders and fractured skulls is inexplicable.

When searching for further similarities between the two law-codes, one has to be careful not to grasp at straws, for as already suggested in the introduction to this dissertation, and again with regard to Alfred's law on entail, rules could exist in custom without being written down. It may be that rules similar to those in Æthelberht's code already existed in West Saxon law before the promulgation of Alfred's *domboc*, and the mere fact that other kings enacted certain matters in writing

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could have prompted Alfred to do the same. It is also possible that some laws found their way into writing in response to difficult disputes which had come to the attention of the king and his advisors. Nevertheless, there are several other provisions in Alfred's code which could have been borrowed from that of Æthelberht. The most striking is Alfred's law on binding a *ceorl* (*Alf.* 35: 'Gif mon cierliscne mon gebinde unsynnigne, gebete mid ·x· scillingum'), which closely resembles *Abt.* 24 ('Gif man frigne man gebindeþ, ·xx· scill' gebete').¹¹⁴ Similarly, Alfred's law on lending a weapon for homicide (*Alf.* 19) may be derived from a similar provision in Æthelberht's code (*Abt.* 18).

Gif man mannan wepnum bebyreþ, ƿær ceas
weorð, 7 man nænig yfel ne gedep, ·vi·
scillingum gebete.

For the reasons just mentioned above, Alfred's stipulation of the king's *borh* (*Alf.* 3) need not have been inspired by *Abt.* 8, which set the Kentish royal *mund* at 50 gold shillings (100 West Saxon silver shillings). There is, however, no similar provision in Ine's code, and hence there is nothing in earlier West Saxon written law to compare with Alfred's figure of five pounds of pure pennies (equivalent to 240 West Saxon shillings).

¹¹⁴ Cf. *Alf.* 6 and *Abt.* 1, *Alf.* 7 and *Abt.* 2, *Alf.* 17 and *Abt.* 25, *Alf.* 19 and *Abt.* 18, *Alf.* 35 and *Abt.* 24, *Alf.* 40 and *Abt.* 17 and the various provisions in both codes concerning sexual offences.

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This is more than double the Kentish *mund*; but such an increase is consistent with Alfred's protection of the king's status, as reflected by his extensive treason laws and the importance which attached to oaths of loyalty.¹¹⁵ In this context, what is important is the confirmation of Alfred's statements in his prologue that he gathered his sources, and adapted them as he felt appropriate, if necessary by omission (*> on oðre wisan bebed to healdanne*). His mention of gathering together the laws of his predecessors is not mere *topos*, nor does Alfred simply pay lip-service to earlier codes in order to set his own work on an ideologically higher plane.¹¹⁶ There is in Alfred's law-code a very real re-working of earlier law, and insofar as one can tell, it appears that Alfred did precisely what he claims to have done in Bib. Int. 49.9.

¹¹⁵ From a diploma drawn up just after the accession of Edward the Elder (S362) one learns that Alfred enforced this law, for when Ealdorman Wulfhere 'deserted without permission both his lord King Alfred and his country in spite of the oath which he had sworn to the king and all his leading men', he suffered forfeiture of his property as a consequence (translated in *EHD*, no. 100, pp. 541-42).

¹¹⁶ In this respect, Alfred's code is hardly comparable with the Emperor Justinian's compilation of the seventh *novella* (*pace* Wormald, '*Lex Scripta and Verbum Regis*', p. 113), which was the source of similar statements in Visigothic and Lombardic law-codes. In England there was little consciousness of Roman legal tradition; Alfred almost certainly did not know Justinian's legal works, and he is scarcely more likely to have been familiar with the other continental codes which made similar statements. I am indebted to Patrick Wormald for indicating his conviction that this formulation had reached England through the *Admonitio Generalis*, and thence Ansegisus. I regret that I remain unconvinced that Justinian was the sole, or even ultimate, source of this *topos*.

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How then should one construe the Ine appendix? Liebermann's views on the matter have already been mentioned; he believed that Alfred omitted material from Ine's code which was inapplicable.¹¹⁷

Allenfalls vermuten lässt sich, Ine werde Sätze gegen das in Resten noch nicht ganz erstorbene Heidentum enthalten haben, die wir jetzt vermissen; solche stehen sogar noch bei dem gleichzeitigen Wihfred....

He likewise explained the contradictions between Alfred's code and the Ine appendix by asserting that Alfred used Ine's code as a source, but failed to remove from the appendix those provisions which contradicted his own law; and he also pointed out that comparable contradictions occur in other Germanic law-codes.¹¹⁸ This is undoubtedly true, but two points need to be made. Firstly, because Ine's code has been transmitted to us only as an appendix to Alfred's code, it is impossible to know for certain whether any matters of substance were omitted by Alfred from the earlier law. To argue from analogy with the contents of Wihfred's code is unsound, for one of the principal characteristics (and pleasures) of Anglo-Saxon law is that different kings stressed different concerns, and none ever conveys a complete picture of the law at any one time. The Ine appendix certainly looks complete; there is nothing obviously missing, and the code even

¹¹⁷ Liebermann, 'Ueber die Gesetze Ines von Wessex', p. 23 (7).

¹¹⁸ Liebermann, ed., *Gesetze*, III, pp. 35-36 (28).

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retains its original prologue. The second point to make is that Alfred certainly used Ine's code when composing his own, much in the same way as he used the codes of Æthelberht and (presumably) Offa. This is why there are so many obvious borrowings and contradictions between Alfred's code and the Ine appendix. For instance, *Alf.* 40 and *Ine* 45 cover much the same subject-matter, although Alfred elaborated upon the code of his predecessor. *Alf.* 40 reads:

Cyninges burgbryce bið .cxx. scillinga;
ærcebiscepes hundnigontig scillinga; oðres
biscepes 7 ealdormonnes .lx. scillinga;
twelfhyndes monnes .xxx. scillinga;
syxhyndes monnes .xv. scillinga; ceorles
edorbryce .v. scillinga.

This should be contrasted with *Ine* 45, where the penalties prescribed in the earlier code are quite different.

Burgbryce mon sceal betan .cxx. scillinga
kyninges 7 biscepes, þær his rice bið;
ealdormonnes .lxxx. scillinga; cyninges
ðegnes .lx. scillinga; gesiðcundes monnes
landhæbbendes .xxxv.; 7 bi ðon ansacan.

It could be argued that these alterations provide important evidence of changing status in the society. Whereas, in the Ine appendix, the status of king and bishop are equated, in Alfred's code the penalty for breaking and entering the king's residence stands alone (even though it is unchanged). Alfred introduced a fine for breaking into an archbishop's lodging, and, in contrast to Ine's code, he equated bishops and ealdormen.

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The compensation payable to an ealdorman was thus reduced by Alfred, and this is comparable with the situation in *Alf.* 15 (which is closely related to *Ine* 6.2). Similarly, both Alfred and *Ine* include provisions on sanctuary. *Ine* 5 states that anyone who runs into a church may keep his life.

Gif hwa sie deaðes scyldig ⁊ he cirican
geierne, hæbbe his feorh, ⁊ bete swa him ryht
wisige.

Alfred, on the other hand, limited the period of respite to three days, presumably to encourage reconciliation (*Alf.* 2), and, unlike *Ine*, he established penalties for the breach of 'cyricfrið'. Both codes also address the matter of burning and felling trees. *Ine* states that one must pay the full fine (*fulwite*) for burning a tree in a wood because fire is a thief (*Ine* 43: 'for þam þe fyr bið þeof'). He continued by stating that if 'many trees' are felled, one must pay thirty shillings for each of the first three, adding that:

...ne ðearf he hiora ma geldan, wære hiora
swa fela swa hiora wære, for þon sio æsc bið
melda, nalles ðeof. (*Ine* 43.1)

In his treatment of the subject, Alfred grouped both burning and felling together, abolishing in this context the distinction between 'melda' and 'ðeof', and commanding that one must pay five shillings for 'each great tree', and five pence for every smaller tree no matter how many there are (*swa fela swa hiora*). He also

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prescribed a thirty shilling fine. In fact, Ine's 'fulwite' of 60 shillings (equating fire with theft) also contradicts *Alf.* 9.2, which standardizes the fine payable for all different types of theft except abduction. It is possible, of course, that Alfred did not view wood-cutting as theft.

Apart for those provisions in Alfred's code which overtly contradict similar laws in the Ine appendix, there are also several examples of possible borrowings, where Alfred has elaborated upon stipulations in the earlier code. For example, both Alfred and Ine included laws on fighting in the king's residence (which Alfred calls his 'heall' and Ine his 'hus'). The Ine code states:

Gif hwa gefeohte on cyninges huse, sie he
scyldig ealles his ierfes, ⁊ sie on cyninges
dome hwæðer he lif age þe nage. (*Ine* 6)

Alfred, however, modified this provision to include merely drawing a weapon, and although both codes prescribe that the king is to decide how to punish the offence ('swa deað swa lif'), Ine's code also mentions forfeiture of property which Alfred's does not. Similarly, *Alf.* 26 seems to be derived from a provision in Ine's code (*Ine* 34), relating to the killing of an innocent man whose wergild is two hundred shillings. The Alfred code demands:

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Gif mon twyhyndne mon unsynnigne mid hloþe
ofslea, gielde se ƿæs sleges andetta sie wer
7 wite; 7 æghwelc mon ƿe on siþe wære geselle
·xxx· scillinga to hloþbote. (*Alf.* 29)

Like the Ine code, the notion of collective responsibility is clearly enunciated, although Alfred's code punishes participation separately from the main crime of homicide. Ine's code, on the other hand, states that an accused killer may clear himself of culpability, and pay compensation for the expedition according to the wergild of the slain man.

Se ƿe on ƿære fore wære ƿæt mon monnan
ofsloge, getriewe hine ƿæs sleges, 7 ƿa fore
gebete be ƿæs ofslegenan wergielde. (*Ine* 34)

This provision implies that the level of compensation payable was dependent upon the status of the person killed, although no explicit distinction was made, and the various amounts due are not given. Alfred's code rectified this deficiency, for clauses *Alf.* 30-31 specify the compensation payable for slain men whose wergild was 600 and 1200 shillings respectively. It should also be noted that for a man whose wergild was 200 shillings, the Ine code demanded compensation of fifty shillings, while the compensation in Alfred's code is only thirty shillings. Several other clauses also provide evidence of this phenomenon: *Alf.* 31 could well be derived from *Ine* 23.1 (since both concern the killing of kinless men); and *Alf.* 34 addresses much the same subject

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as *Ine* 25 (the requirement that traders furnish good evidence of their activities).

The presumption that Alfred borrowed from *Ine*'s code to compose his own law is certainly warranted on this evidence, and furthermore it is entirely consistent with his assertions in the prologue (Bib. Int. 49.9), for Alfred's treatment of the *Ine* code is comparable with his use of the laws of Æthelberht and Offa. The issue is how one should regard the discrepancies between Alfred's code and the appendix. If one regards the *domboc* as a fundamentally literary and ideological work, then their existence can be explained away with only a modicum of difficulty. It is enough to observe that *Ine*'s code is, so far as we know, the first West Saxon law and the only code promulgated for that kingdom before the reign of Alfred. One could therefore suggest that, as a West Saxon king, Alfred chose to give *Ine*'s code prominence over the 'foreign' codes of Æthelberht and Offa, and he was not unduly concerned about changing those laws in his own code which were based upon similar provisions in the law-code of his predecessor. The problem with this argument is that Alfred nowhere indicated that this was his intention. It is true that, in his prologue, Alfred called *Ine* 'my kinsman' (*mines mæges*); but otherwise he does not distinguish him from Æthelberht and Offa, and he never suggested that he was issuing *Ine*'s code as part of

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his own. On the contrary, Alfred says that he only used the law that pleased him (and even then, as we have seen, he was happy to amend it). One might also argue that the fact of written law was more important than its substance; but, in Alfred's case, the testimony of Asser (examined above) suggests that the king was very much concerned with the practical administration of justice, and that he played an active role in its execution. It may be something of a quantum leap to use this as evidence to suggest that Alfred intended his law-code to be used by his officials in their practice of the law, but given that Alfred circulated his analogous translation of the *Cura Pastoralis* to the bishops for guidance in their pastoral ministry, it is not impossible to suppose that this law-code was also sent to apposite recipients. Viewing the code as a didactic instrument of government may have its problems; but it would be wrong to suppose that regarding the law as an ideological or literary statement answers all the difficulties mentioned above.

One further point must also be made. Most of the scholars who have regarded the Ine code as an integral part of Alfred's production have either considered the rubrics as genuine or have not considered them at all. Liebermann was the exception to this rule, but, as Patrick Wormald warns in his forthcoming book (and as we

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have already seen in the previous chapter), Liebermann tended to draw a 'subjective line between what he found credible and what he did not'. This chapter began by examining the rubrics, and concluding that they may well have been the work of a later hand. If this is the case, one is no longer forced to see the *Ine* appendix as an integral part of Alfred's law-code as he issued it. It could be that the rubricator or another unknown interpolator, and not Alfred, added the *Ine* appendix and created the *domboc* as we have it. Schmid certainly believed that Alfred's code was issued independently of *Ine*'s law, and although the unanimity of the manuscripts speaks against this, one should bear in mind that the all the extant manuscripts were compiled long after the time that Alfred would have circulated his law-code.¹¹⁹

In his edition, Liebermann did not address these various possibilities. He argued that '*als dumboc ist stets Af + Ine verstanden*' because 'in II *Ew* 5,2 kann nur *Ine* 30 zitiert sein'.¹²⁰ This argument is not as conclusive as Liebermann believed, for it is possible that II *Edw.* 5.2 refers not to *Ine* 30 but to *Alf.* 4. II *Edw.* 5 concerns the breaking of oaths and pledges, and

¹¹⁹ Schmid, ed., *Gesetze*, p. xl: '...nur müssen wir darauf aufmerksam machen, dass die Annahme am nächsten liegt, Aelfred habe gar seine Publication der beibehaltenen ältern Gesetze für nothwendig erachtet, sondern nur in sein Gesetz aufgenommen, was er ändern oder neu hinzufügen wollte'.

¹²⁰ Liebermann, ed., *Gesetze*, III, p. 31 (1).

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certainly refers to *Alf.* 1-1.2. The link between the breaking of an oath and treason is not only implied by Alfred's code, it is stated explicitly in *Alf.* 1.1.

Gif hwa to hwæðrum þissa genied sie on woh:
oððe to hlafordsearwe, oððe to angum unryhtum
fultume, þat is þonne ryhtre to aleoganne
þonne to gelæstanne.

The subject of treason is again addressed by Alfred in *Alf.* 4, where plotting against the king's life (*cyninges feorh sierwe*) has a much wider scope than just assassination; it deliberately encompasses the harbouring of exiles (*wreccena feormunge oððe his manna*). Given the link between oaths, treason and harbouring, it makes just as good (or better) sense to read the whole of *II Edw.* 5 as a reference to the opening chapters of Alfred's code.

Gif hwa ðis oferhebbe 7 his að 7 his wæd
brece, ðe eal ðeod geseald hæfð, bete swa
domboc tæce. (*II Edw.* 5)

Gif hine hwa feormige syððan, bete swa seo
domboc sæge, 7 se scyle ðe flyman feormige,
gif hit sy herinne.... (*II Edw.* 5.2)

Against this hypothesis, one must note that *II Edw.* 5.2 refers to 'flyman feormige', while *Alf.* 4 concerns 'wreccena feormunge'. The meaning is virtually the same, but *Ine* 30 also describes the crime of harbouring as 'fliemanfeorm'. So far as the law was concerned, there was little practical distinction between exiles (*wrecca*) and fugitives from justice (*flieman*); for all we know, there may have been none at all, and Edward may simply

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have used the word with which he was more familiar. Indeed if Alfred's provision is one of those based on Ine's code, it may be that Alfred himself considered 'wreccena feormung' to be synonymous with 'fliemanfeorm', and he adopted the expression more natural to him. The simplest explanation is, of course, that Edward was citing the Ine appendix and not Alfred's code (in which case Liebermann was correct); but that would arguably be rather odd, given the broader context of *II Edw. 5*. In any event, the possibility that Edward himself was responsible for the form of the *domboc* cannot be excluded.

Even if Alfred was responsible for appending the Ine code to his own, it seems most unlikely that he altered it.¹²¹ His claim that he used the laws of his predecessors selectively can be explained by reference to his use of Ine's code in the composition of his own law, and if Alfred preserved the Ine code as a symbolic

¹²¹ In an unpublished paper ('Alfred, Ine, Kindred and Lordship'), Dumville pointed to three possible anachronisms in the Ine appendix. The first is the usage of *hid* in *Ine* 32; the second is the reference to *scir* in *Ine* 36.1 and *Ine* 39; and the third is the royal style used by Ine at the beginning of his code ('Ic Ine, mid Godes gife Wesseaxna kyning...'), a vernacular equivalent of the *rex Dei gratia* formula. In the case of the word *scir*, Alfred seems to have used *Ine* 39 as the basis for his own law (*Alf.* 37), equating the word *boldgetal* with Ine's *scir*. The 'rex Dei gratia' formula occurs frequently in genuine charters of King Offa, and is not an Alfredian initiative. Thus, given the paucity of evidence before the ninth century, it is unsafe to conclude from these examples alone that Alfred revised Ine's code. Moreover, one could also argue that since Alfred had already used and amended parts of Ine's code, he stood to gain nothing by tampering with the appendix.

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representation of ancient West Saxon custom, the likelihood of his changing it is reduced even further. Nevertheless, the appendix as it stands does exhibit certain curious features, including two cases of near repetition. *Ine* 18 reads:

Cierlisc mon gif he oft betygen wære, gif he
æt siðestan sie gefongen, slea mon hond oððe
fot.

Ine 37 is remarkably similar:

Se cirllisca mon, se ðe oft betygen wære
ðiefðe, ⁊ þonne æt siðestan synnigne gefo in
cea<c>e oððe elles æt openre scylde, slea him
mon hond of oððe fot.

Both these clauses state that the subject of the provision is a *ceorl* who has been accused frequently, and both prescribe the punishment of mutilation. *Ine* 37 specifies the crime of theft, and although the text of *Ine* 18 does not, the rubricator certainly construed it to mean precisely that (LXII: 'Be cirlliscum ðe ofe gefongenum'). Similarly, *Ine* 18 implies that one must seize the criminal in the act; *Ine* 37 allows this, but also offers the opportunity of proving guilt at the ordeal. Similarly *Ine* 16 and *Ine* 35 both concern slaying a thief and the oath required to avoid culpability. Both begin in an almost identical fashion, however *Ine* 35 elaborates upon *Ine* 16. Neither of these examples provides sufficient evidence to prove that the *Ine* appendix was compiled from more than one exemplar, although it is a possibility that both Liebermann and

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Chadwick envisaged.¹²² It is tempting to identify the rubricator with the person who compiled the *Ine* appendix, and added it to Alfred's code, thereby explaining not only the interpolation in rubric ·LXII· (relating to *Ine* 18), but also the internal contradictions, and even the other discrepancies between the chapter-headings and the text discussed earlier in this chapter. Yet it is ultimately a temptation which must be resisted, for while the authenticity of the rubrics is highly suspect, the inclusion of *Ine*'s code by Alfred is less so.

CONCLUSION

This chapter began with an assumption. It was argued that while the textual transmission indicates that the law-code as we have it is akin to that issued by Alfred, there remains a slight possibility that before the code was transmitted in its present form, it existed without the rubrics and *Ine* appendix. There is no way to prove this; the textual history can only take one back so far (in this case to around the year 950). An analysis of the law-code itself, section by section, is the only way to go beyond the evidence provided by the manuscripts. Using this technique, one can deduce the order in which the sections of the code were composed,

¹²² Liebermann, ed., *Gesetze*, III, p. 64 (3); Chadwick, *Studies on Anglo-Saxon Institutions*, p. 10.

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and may speculate about the methods of, and reasons for, composition of the work. It is clear that the Biblical Introduction and the law bearing Alfred's name form the core of the compilation, and were composed first; indeed the two are linked thematically, and must be read as a discrete unit. To these were added the list of rubrics and Ine's law-code, but the latter had already been used by Alfred as a source for several of his own provisions, and consequently contradictions between the two sections of the code were created. The rubric list serves to lend *Alfred-Ine* an artificial sense of unity, and, not surprisingly, it was added last. This much, at least, is clear from the content of rubric ·XXVIII, which implies the existence of a previous clause to which it refers.

There is no way of ascertaining precisely when this amalgamation took place; but a detailed comparison of the rubrics with the text strongly suggests that the chapter-headings were not composed by the author of Alfred's code, for there are numerous differences of substance and vocabulary. The existence of comparable rubrics in the other translations made or commissioned by Alfred strengthens the possibility that the chapter-headings to the law-code originated at the instigation of Alfred himself. Against this, one must consider Alfred's overtly didactic *modus operandi*, and his express desire to make important texts accessible to those in authority. The

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rubrics do not advance this ambition; they frequently misrepresent the meaning of the text, and do not fulfil any obvious purpose.

The Biblical Introduction is certainly an integral part of the *domboc*, and it reveals much about Alfred's methods and purposes. It is here that one first encounters his remarkable penchant for changing and adapting his source, without misrepresenting its central theme. This is precisely how the king used the laws of Æthelberht, Ine and (insofar as one can tell) Offa. The Biblical Introduction displays a high degree of intelligent interpretation, and a deliberate reworking of material to emphasize matters perceived by Alfred as particularly important. In this respect, it is comparable with Alfred's other translations (of the first fifty Psalms, Gregory's *Pastoral Care*, Boethius's *Consolation of Philosophy*, and St. Augustine's *Soliloquies*).¹²³ This type of introduction is unique in the corpus of Anglo-Saxon laws, and it is surprisingly extensive. It may have been inspired by the *Liber ex lege Moysi*, although the importance of Mosaic law in a Christian society must have been self-evident then as now. If the law-code was issued to the king's officials, then such a preface would have been entirely apposite,

¹²³ A detailed consideration of these translations is contained in Frantzen, *King Alfred*, pp. 22-105.

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given the degeneration of learning in England, and Alfred's well-attested desire to encourage the pursuit of *sapientia*. The Biblical Introduction also provides a context for the composition of Alfred's code, which was promulgated by a devout king for his Christian people.

The Ine appendix is a different matter altogether. It may be that Alfred decided to give particular prominence to the important law-code of his West Saxon predecessor, as a mark of respect. Such a practice would not have been unique in early medieval Europe, and the redundancies and contradictions which occur as a result may not have posed the difficulty for Alfred's officials that we in our nescience envisage.¹²⁴ Only the rubrics give Alfred's code and the Ine appendix an artificial semblance of unity, and without them the problems caused by the contradictions disappear entirely.

Neither the manuscripts containing *Alfred-Ine*, nor the textual transmission, speaks decisively against the addition to the code of either the table of chapter-headings, or both the table and the Ine appendix, by Alfred's immediate successors. Yet while many discrepancies occur in the different manuscript versions

¹²⁴ Of the Irish jurists, Binchy wrote: 'The more ancient a custom, the more venerable it became in their eyes, and the fact that it had long been obsolete in practice was quite irrelevant; far from being jettisoned, it was religiously preserved, often side by side with the later rule which had superseded it'. See Binchy, *Celtic and Anglo-Saxon Kingship*, p. 1.

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of the rubrics, the Ine appendix remains fundamentally the same. This unanimity, even between the different recensions of *Alfred-Ine*, is impressive. That Alfred recognized the importance of Ine's code is clear from the number of times that he used and modified it when compiling his own law. To contradict this work of adaptation by physically joining Ine's code to his own amended text may seem illogical to us, but this is a subjective judgement, based on an incomplete knowledge of how the legal system operated. One must also remember that the Ine appendix retains its original prologue, which in context seems quite incongruous (especially since it is rubricated as 'XLIIII: Be Ines domum'). On the other hand, its inclusion ensures that the distinction between the two laws is unmistakable. Thus, it is reasonable to imagine that a recipient of the code in its present state would have known what law to apply and what was archaic or inapplicable. Anachronisms and redundancies must have been even more obvious then than now, and it is probable that a ninth-century West Saxon would have been naturally sensitive to archaic diction and vocabulary in his own dialect, and would immediately have recognized the obsolete customs embodied in the appendix.

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It appears that whoever composed the table of chapter-headings was more concerned with number symbolism than an accurate description of the contents of the law-code. This does not fit well with what we know about Alfred's concern to make texts accessible; this was, after all, one reason why he undertook a programme of translation in the first place. The significance of the number 120, as an appropriate number for law, may well have been apparent to any educated exegete;¹²⁵ whether Alfred would have valued its symbolism more highly than accurate rubrication is another matter entirely. It may be that an ingenious scribe added the list when copying the codes into a more permanent collection, and that later scribes, who recognized the peculiarities, attempted to improve the table with varying degrees of success. Certainly the surviving manuscript versions of *Alfred-Ine* resemble deliberate acts of preservation more than instruments of legislature; and in the former context, the existence of nonsensical rubrics is less disconcerting.

All this is speculation, but even the rubrics cannot spoil the overwhelming impression created by Alfred's code: namely that it is a full and useful compendium of legal materials, beginning with God's law

¹²⁵ Cf. Bede, 'De Templo Salomonis', in *Bedaе Venerabilis Expositio Actuum Apostolorum et Retractatio*, edited by Laistner, p. 11.

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given to Moses, followed by current English law, and supplemented by what was probably the earliest (and only) West Saxon code to precede Alfred's own. The law-book in this form reflects Alfred's didactic and utilitarian ideals; there is a natural hierarchy in the codification, where God's law is given pre-eminence, followed by West Saxon custom. Furthermore, without the rubrics, Alfred's code would have begun with the ten commandments, an opening no less apposite than Saint Matthew's 'golden rule'.¹²⁶

There is no reason to suppose that Alfred tampered with Ine's code as we have it. The near repetitions in the appendix may simply have resulted from the use of two slightly different exemplars in copying; and Alfred's prefatory comments, which have been used to suggest that he changed parts of the Ine code, are better understood as a general statement of method, indicating that he adapted Ine's laws in the process of compiling his own, just as he amended those of Æthelberht and Offa. Thus one may safely (albeit somewhat cautiously) use Ine's code as good evidence of seventh-century legal practice.

¹²⁶ The receipt of God's law by Moses must have been a familiar image. Cf. the ninth-century manuscript from Tours (BL, MS Additional 10546), which illustrates the hand of God offering the law to Moses, and its subsequent proclamation to the chosen people. The illumination is reproduced in Hodgkin, *A History of the Anglo-Saxons*, II, plate 76 (facing p. 611).

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Having examined the textual aspects of *Alfred-Ine*, one may now with confidence undertake a consideration of the substantive law in Alfredian England, and a full-length analysis of the evolution of the Anglo-Saxon legal system.

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THE LAW-CODE OF
KING ALFRED THE GREAT

APPENDIX

EDITING THE ANGLO-SAXON LAWS

(forthcoming)¹

In 1568 John Day of Aldersgate printed the *editio princeps* of the Anglo-Saxon law-codes, using the Old English type which he had cut under commission from Matthew Parker for *A Testimonie of Antiquitie*.² This edition of the laws, entitled *Archaionomia*, was published in the name of William Lambarde (1536-1601); however, as the preface (*epistola*) reveals, it was in effect a joint venture between Lambarde and his friend and mentor Laurence Nowell.³ Not only did Nowell teach Lambarde many of the skills necessary for antiquarian research, but prior to his journey to France on 25 March 1567, he also provided the young lawyer with transcripts of the law-codes, encouraging him to translate them and publish an edition.⁴

¹ This paper will be published in the proceedings of a conference, the editing of Old English texts, held at the Manchester Centre for Anglo-Saxon Studies, University of Manchester, 25-27 May 1990.

² M. Parker, ed., *A Testimonie of Antiquitie, shewing the auncient fayth in the Church of England* (London, 1566x67).

³ W. Lambarde, ed., *Archaionomia, sive de priscis Anglorum legibus libri, sermone Anglico, vetustate antiquissimo, aliquot ab hinc seculis conscripti, atque; nunc demum, magno iurisperitorum, & amantium antiquitatis omnium commodo, é tenebris in lucem vocati* (London, 1568). Cf. R.M. Warnicke, *William Lambarde. Elizabethan Antiquary* (Chichester, 1973), pp. 23-35.

⁴ In the Lambarde family diary (London, Drapers' Company, MS H./Add. 27, p. 88), s.a. 25 March 1567, William wrote: 'Anno a nato saluatore 1567 in Galliam vehitur Laurentius Noelus, mei amantissimus'. Extracts from the diary were printed by Multon Lambarde, 'The Lambarde Diary', *Miscellanea Genealogica et Heraldica* 2 (1876), 99-114.

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This was the beginning of a long editorial history; indeed no century has passed since the sixteenth without the production of a new edition of the Anglo-Saxon laws.

The process of defining a corpus of law-codes and relevant manuscripts was a gradual one, which culminated in the publication of Felix Liebermann's monumental, three volume *Die Gesetze der Angelsachsen*.⁵ A review of this work, by the renowned legal historian Frederic William Maitland, praised it as capable of bearing comparison 'with the best work that has hitherto been done upon any historical materials of a similar kind', although Maitland could not resist a wry lament:⁶

If Englishmen cannot or will not do these things, they can at least rejoice that others can and will.

As a product of its time, Liebermann's edition is certainly remarkable. Not only does it provide extensive detail about both the language and legal substance of the codes, but the texts, which are set out synoptically by manuscript, are extremely accurate. Having collated the relevant codices with Liebermann's texts of both *Alfred-Ine* and the entire corpus of Æthelred's codes, one may assert with some confidence that Liebermann's errors are

⁵ F. Liebermann, ed., *Die Gesetze der Angelsachsen*, 3 vols (Halle, 1898-1916). The first complete volume of Liebermann's edition was published in 1903; it was also issued in separate fascicles, beginning in 1898.

⁶ F.W. Maitland, 'The Laws of the Anglo-Saxons', *Quarterly Review* 200 (1904), 139-57, at p. 139.

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few, and generally insignificant.⁷ On this basis, one might assume that it is safe to rely on the texts which he printed in the *Gesetze*; and if one only uses the edition to study legal vocabulary, this is perhaps correct. For other purposes, however, the same cannot be said.

There are three fundamental flaws in Liebermann's treatment of the manuscript sources: the first is his handling of the textual transmission; the second is his naming and classification of the law-codes; and the third is his division of the texts into chapters. These problems unfortunately affect the utility of his edition, for the manuscripts form a corner-stone upon which any analysis of the laws themselves must be constructed.⁸ The problems with Liebermann's stemmata are ultimately the result of his analytical method, for he examined each of the codes individually, and failed to give due consideration to the groupings of codes within related

⁷ The most common mistakes are mis-spellings and a failure to indicate the expansion of abbreviations; both these categories of error could have originated when the work was typeset. The only substantial error worthy of special notice occurs in Liebermann's G-text of *VIII Æthelred* (cap. 5,1), where the words 'þær nan legerstow ne sy' were omitted after the word 'feldcyr'i'can' (see Liebermann, ed., *Gesetze*, I, p. 264).

⁸ On the manuscripts of Anglo-Saxon law generally, see Mary P. Richards, 'The Manuscript Contexts of the Old English Laws: Tradition and Innovation', in *Studies in Earlier Old English Prose. Sixteen Original Contributions*, edited by P.E. Szarmach (Albany, 1986), pp. 171-92.

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manuscripts. As a result, many of the stemmata are unnecessarily convoluted; and, when one examines the transmission of the codes manuscript by manuscript, one finds that the individual stemmata do not fit together. In order to resolve some of the difficulties inherent in his approach, Liebermann was forced to imply the existence of lost manuscripts. In several of the stemmata he asserted, on the basis of inconclusive textual evidence, that William Lambarde had used lost manuscripts to prepare his texts in the *Archaionomia*, and he suggested that these were the missing links between known codices. Evidence which has come to light since the publication of the *Gesetze* suggests that while lost manuscripts may have existed in the sixteenth century, they were certainly far fewer in number than Liebermann supposed. In 1934 Lord Howard de Walden gave the British Museum eight transcripts in Nowell's hand, including a copy of the badly burned British Library, MS Cotton Otho B.xi, a codex which contained the second oldest version of *Alfred-Ine*, together with the codes known as *II As.* and *V As.*⁹ This transcript, which bears annotations made by Lambarde, is almost certainly one of the sources provided by Nowell for the *Archaionomia*, and it is valuable both for the important textual evidence which it

⁹ The following abbreviations are used in references to particular law-codes: *Alf.* (Alfred); *Edw.* (Edward the Elder); *As.* (Æthelstan); *Edg.* (Edgar); *Atr.* (Æthelred the Unready).

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contains, and also because it provides tangible proof of Lambarde's collaboration with Nowell. Since its discovery, several of the other transcripts used by Lambarde have also reappeared, although they vary considerably in importance.¹⁰

Felix Liebermann saw only one of these Nowell transcripts: Canterbury, Christ Church Cathedral Library, MS Literary B.2 (which he called *So*). He did not, however, recognize its true provenance, and he mistakenly attributed it to William Somner (1606-69), who had acquired it from the Lambarde library. To judge from the introduction to his *Gesetze*, Liebermann never used the other transcripts by Nowell at Canterbury (MSS Literary E.1 and E.2), which is surprising, given that they had been described in a published catalogue as early as 1911.¹¹ Had he seen these manuscripts, Liebermann might have recognized the true provenance of *So*, since both transcripts bear Lambarde's *ex libris*, and MS Literary E.2 shows signs of use by a printer. Yet, as it

¹⁰ Professor C.T. Berkhout has identified another related Nowell transcript of *Alfred-Ine*: British Library, Henry Davis Collection, [MS] M30. There are also several relevant transcripts by Nowell in the United States. Huntington Library, MS HM 26341 is a transcript by Nowell of the *Decreta Willelmi Bastardi*; and Los Angeles, University of California, Research Library MS 170/529 is a commonplace book written by Nowell, which contains an almost complete transcript of the twelfth-century Latin translation of the laws, known as *Quadripartitus*.

¹¹ C.E. Woodruff, ed., *A Catalogue of the Manuscript Books in the Library of Christ Church Canterbury* (Canterbury, 1911).

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happened, within two decades of the appearance of the *Gesetze*, in which Liebermann had defined the corpus of manuscripts and set out in detailed stemmata the relationship between them, new textual evidence had come to light, throwing doubt upon his work.

Even before the 'rediscovery' of the Nowell transcripts in 1934, Kenneth Sisam had suggested that several of the passages in the *editio princeps* for which there is no extant source, occurred as a result of sixteenth-century translation into Old English from the twelfth-century Latin translation of the law-codes, *Quadripartitus*.¹² Liebermann did not accept Sisam's arguments, and he continued to assert steadfastly the existence of lost manuscripts known to Lambarde.¹³ One can only regret that Liebermann did not have the opportunity to debate the matter in the light of those transcripts given to the British Museum in 1934,¹⁴ for, as Neil Ker observed, they suggest that the sources from which the *Archaionomia* was printed, are not (as

¹² K. Sisam, 'A review of *The Laws of the Earliest English Kings*', *MLR* 18 (1923), pp. 100-4, and K. Sisam, 'The Authenticity of Certain Texts in Lambarde's "Archaionomia" 1568', *MLR* 20 (1925), 253-69. See also in this connection, R. Flower, 'Laurence Nowell and the Discovery of England in Tudor Times', *PBA* 21 (1935), 47-73, at p. 72, n. 16.

¹³ F. Liebermann, 'Ist Lambardes Text der *Gesetze* Æthelstans neuzeitliche Fälschung?', *Beiblatt zur Anglia* 35 (1924), 214-219.

¹⁴ Felix Liebermann died after being hit by a car in Berlin on 7 October 1925.

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Liebermann thought) 'numerous and now largely missing', but 'few and extant'.¹⁵ Furthermore, as a result of his 'stemmatische Überzüchtung',¹⁶ Liebermann's manuscript sigla are clumsy and misleading, since they reflect his artificial view of the relationship between the codices. In short, if one chooses to be guided by Liebermann's stemmata, one must exercise extreme caution when studying the transmission of the law-codes.

The other two deficiencies in Liebermann's edition, namely the division of the law-codes into chapters and the naming and classification of the texts, are both derived from Reinhold Schmid's 1858 edition of the laws.¹⁷ It is ironic that Liebermann, who was the first editor to examine the law-codes systematically in their manuscript contexts, should have chosen to follow Schmid in this respect, for although Schmid's second edition contains the first attempt by an editor to catalogue the Anglo-Saxon legal manuscripts, he never actually saw any of the codices in person.¹⁸ The text of Schmid's first

¹⁵ N.R. Ker, *Catalogue of Manuscripts containing Anglo-Saxon* (Oxford, 1957), p. li. Cf. R. Torkar, ed., *Eine Altenglische Übersetzung von Alcuins 'De Virtutibus et Vitiis'*, Kap. 20, *Texte und Untersuchungen zur Englischen Philologie* 7, general editors H. Gneuss and W. Weiss (München, 1981), p. 4.

¹⁶ *Ibid.*, p. 124.

¹⁷ R. Schmid, ed., *Die Gesetze der Angelsachsen*, second edition (Leipzig, 1858).

¹⁸ This fact was noted by H.D. Hazeltine, 'Felix Liebermann, 1851-1925', *PBA* 25 (1939), 1-44, at p. 13.

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edition was taken from the 1721 edition of the laws by David Wilkins, and his text of the second edition was derived from Benjamin Thorpe's 1840 edition, published under the auspices of the Public Records Commission.¹⁹ Schmid's description of the manuscripts, and hence his classification of the texts, was based largely on Humphrey Wanley's catalogue;²⁰ and Liebermann's classification (as already pointed out) was based on that of Schmid. As a result, several of the texts in Liebermann's *Gesetze* are described inaccurately. The codes which Schmid called *II Edg.* and *III Edg.* are, in fact, one law (and Liebermann recognized this); the same is true of the codes *I* and *II Cnut.* Similarly, the so-called appendix to *II Atr.*, on vouching to warranty, bears no relation whatsoever to the treaty which precedes it, and may not even belong to the reign of that king. The code *VI As.* is not a royal law at all, but was issued in the name of the bishops and reeves of the 'peace-guild' at London. It is extant in only one manuscript,

¹⁹ R. Schmid, ed., *Die Gesetze der Angelsachsen* (Leipzig, 1832); D. Wilkins, ed., *Leges Anglo-Saxonicae Ecclesiasticae et Civiles* (London, 1721); B. Thorpe, ed., *Ancient Laws and Institutes of England*, 2 vols (London, 1840).

²⁰ H. Wanley, *Antiquæ Literaturæ Septentrionalis liber alter. seu Humphredi Wanleii Librorum Vett. Septentrionalium, qui in Angliæ Bibliothecis extant, nec non multorum Vett. Codd. Septentrionalium alibi extantium Catalogus Historico-Criticus, cum totius Thesauri Linguarum Septentrionalium sex Indicibus, in Linguarum Vetterum Septentrionalium Thesaurus Grammatico-Criticus et Archæologicus*, edited by G. Hickes, II (Oxford, 1705)

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and four clauses at the end of the code seem to have no association with the London document in its original form.²¹ The composite law-code *Alfred-Ine* poses a slightly different set of problems, which are again related to the question of classification of texts. This code has been divided traditionally into four component parts: a table of rubrics; an introduction consisting of translated excerpts from the Bible (particularly of Mosaic law from the Book of Exodus); a law-code in King Alfred's name; and a code which purports to have been issued by King Ine (688-726) some two centuries earlier. There are good textual grounds for regarding the Ine appendix as something less than an integral part of Alfred's law-code as he conceived it, for it is clear that Alfred repeatedly borrowed from Ine's code when framing his own laws, amending it as he thought fit. This is what the king claims to have done in the prologue to his code (Bib. Int. 49.9), although his statement of method is usually regarded as implying that chapters were omitted from the Ine appendix. It is, however, preferable to construe the prologue literally, thereby explaining the contradictions between the Ine appendix and those chapters in Alfred's own law derived from the earlier

²¹ See S. Keynes, 'Royal Government and the written word in late Anglo-Saxon England', in *The Uses of Literacy in Early Medi^aeval Europe*, edited by R. McKitterick (Cambridge, 1990), pp. 226-57, at pp. 239-40.

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work. It is certainly beyond the scope of this paper to set out the complex arguments by which these conclusions may be justified, nor would it be particularly pertinent to do so in this context.²² The point to be made here is that even if an editor surmises that Ine's code is not an integral (or even original) part of Alfred's ordinance, this alone is not sufficient justification for printing the code independently of Alfred's law, as most editors (except Milton Turk and Liebermann) have done. One must necessarily work within the confines of the material as it has been transmitted; and, as Turk put it in the introduction to his edition of 1893: 'Our code has suffered in the past from a too zealous separation into parts, and we prefer as far as possible to regard it as a whole, though gathered from different sources'.²³

Knowing where to divide texts in vernacular English manuscripts is, of course, a common editorial difficulty. Fortunately most of the law-codes survive in more than one manuscript, and, in the case of those codices closely associated with Archbishop Wulfstan, the punctuation

²² *Alfred-Ine* achieves an artificial semblance of unity through the numbered table of rubrics beginning the law-code. These were almost certainly composed by someone other than the author of Alfred's law, since a detailed comparison of the rubrics with the text reveals striking differences of vocabulary. For a detailed discussion of this matter, see volume one of my forthcoming University of Cambridge doctoral dissertation: *The Law-Code of King Alfred the Great*.

²³ M.H. Turk, ed., *The Legal Code of Alfred the Great*, (Halle, 1893), p. 30.

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generally provides good evidence of how the author wished his texts to be divided.²⁴ Several of these manuscripts not only contain laws which are known to have been composed by Wulfstan, but they are also annotated in a hand which Neil Ker identified as that of the archbishop.²⁵ Some of these Wulfstanian annotations are punctuated using the same symbols as those employed in the main text, where the raised point (.), the *punctus eleuatus* (./) and the *punctus uersus* (;) all convey varying degrees of syntactic and rhetorical force. The pointing is often used rhetorically, dividing words and phrases into sense groups; the *punctus eleuatus* has a stronger rhetorical force, although it is also used syntactically (much as one might use a semi-colon today), and the *punctus uersus* always indicates a strong syntactic break, comparable with the modern full-stop. This manuscript punctuation has usually been neglected by editors; indeed Liebermann deliberately appears to have ignored it, dividing chapters not on the basis of the evidence provided by the manuscripts, but on purely subjective grounds.

²⁴ Wulfstan was Bishop of London (996-1002), Bishop of Worcester (1002-1016), and Archbishop of York (1002-1023).

²⁵ N.R. Ker, 'The handwriting of Archbishop Wulfstan', in *England before the Conquest. Studies in primary sources presented to Dorothy Whitelock*, edited by P. Clemoes and K. Hughes (Cambridge, 1971), pp. 315-32.

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He also punctuated his texts in accordance with German (and not Old English) syntactic practice.²⁶

Liebermann's treatment of the version of *VIII Atr.* contained in British Library, MS Cotton Nero A.i. offers a striking example of what can happen if one ignores manuscript punctuation altogether. This Nero manuscript is one of those closely associated with Wulfstan, and it bears annotations in what is probably the archbishop's own hand.²⁷ The only other version of *VIII Atr.* to survive is contained in Corpus Christi College Cambridge, MS 201, which also has connections with Wulfstan, and probably emanated from one of his two sees of York or Worcester.²⁸ The two versions of this code are in fairly close agreement up to clause 5.2, and from Liebermann's edition one might be forgiven for thinking that the Nero manuscript only contains an extract from *VIII Atr.*, although this is not the case. In a note, Liebermann informed the reader that the last word of clause 5.2 (*mæðe*), and those immediately following, are 'kaum lesbar', and if they were difficult to read when he used

²⁶ For a discussion of the imposition of artificial systems of punctuation upon Old English texts, and of the problems created by ignoring manuscript punctuation, see B. Mitchell, 'The Dangers of Disguise: Old English Texts in Modern Punctuation', *RES* 31 (1980), 385-413.

²⁷ Ker, 'The handwriting of Archbishop Wulfstan', pp. 321-24.

²⁸ For a description of this manuscript, see Ker, *Catalogue*, no. 49, pp. 82-90.

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the manuscript, they are virtually impossible to decipher now thanks to the dilute solution of sulphuric acid which was applied (at Liebermann's behest) to 'enhance' the readings.²⁹ Nowhere does Liebermann clearly indicate that a further nine lines of text occur in Cotton Nero A.i immediately after clause 5.2; indeed he prints them in the *Gesetze* over two hundred pages later, as an entirely separate tract which he called variously *Norðhymbra Cyricfrið* and *Norðhymbra Cyricgrið* (I shall use the latter form). The first five chapters of *VIII Atr.* in both manuscripts pertain to church sanctuary (*cyricfrið*); indeed the version of *VIII Atr.* in the Nero manuscript is headed 'Be Cyricgriðe'. As the name suggests, the nine lines which Liebermann designated *Norðhymbra Cyricgrið* also concern sanctuary, referring specifically to churches in Northumbria including, most probably, the cathedral church of Saint Peter in York, Wulfstan's archiepiscopal see. If one examines the layout of this folio in the Nero manuscript (preferably with the assistance of a video-spectral comparator), one discovers that there is no textual justification for regarding *Norðhymbra Cyricgrið* as separate from *VIII Atr.*, since the two are linked thematically, and the latter begins in the same way as the preceding chapters with a shaded initial, in this case the tironian *et nota*

²⁹ See Liebermann, ed., *Gesetze*, I, pp. 264 and 473.

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(see the plate below, line 16). This scribe frequently used the tironian *et nota* (7) as more than a simple abbreviation for 'and'; indeed when enlarged it consistently indicates the beginning of a new chapter. The scribe's methods are further clarified by the fact that such initials are always preceded by a *punctus uersus*. Furthermore, the scribe distinguished between clauses which introduce new subject-matter, and those which merely elaborate on a previous chapter, by shading in red the initials introducing new material.³⁰ Shaded initials are not, however, used to mark the beginning of new texts. New texts in this part of the manuscript are always marked so that they are unmistakable; they invariably begin with a rubric, and, as Professor Loyn observed, the scribe generally employed 'heavy initials which intrude into the margin for the beginning of the law codes'.³¹ Even from the plate overleaf, it is possible to ascertain with certainty that no such initial or rubric occurs on f. 96v.

Thus, on both textual and contextual grounds, there is good reason to believe that *Norðhymbra Cyricgrið* forms part of a variant version of *VIII Atr.*

³⁰ According to Professor Loyn, this scribe (S3) wrote ff. 70-96; see H.R. Loyn, ed., *A Wulfstan Manuscript containing Institutes, Laws and Homilies* (British Museum Cotton Nero A.I), EEMF 17 (Copenhagen, 1971), p. 24.

³¹ *Ibid.*, p. 25.

f. 96v. The text is written in Old English, likely from the Anglo-Saxon Chronicle. The script is a dense, cursive hand, and the parchment shows signs of age and wear. The text is arranged in a single column, with some lines beginning with large, decorated initials. The ink is dark, and the parchment is light-colored with some staining and foxing.

PLATE 13

BRITISH LIBRARY,
 MS COTTON NERO A.i, f. 96v

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This is important, for it provides further evidence of Wulfstan's penchant for redrafting the law-codes which he composed. The variant versions of this code might, therefore, be compared with the codes *V Atr.* and *VI Atr.*, which Schmid classified as two laws, but which, in fact, emanated from the same meeting of the *witan* at Enham in 1008.³² Kenneth Sisam, who discussed the relationship between these codes and the Latin paraphrase of *VI Atr.*, concluded that 'V Æthelred, in its original form, represents the laws approved for the English by the *witan* of 1008, whose chief draughtsman was Wulfstan', while the Latin and vernacular versions of *VI Atr.* are at different levels:³³

...promulgations of the same laws to clergymen by Wulfstan in his capacity as archbishop, with some explanations for their guidance, and some modifications of detail, not of policy, which he was authorized by the *witan* to make in his own province of York.

It is debatable whether Wulfstan was 'authorized' to issue these variant redactions, but in the present context this question is not at issue. It appears that the Nero manuscript version of *VIII Atr.* provides further evidence of the phenomenon described by Sisam, and thus

³² See Liebermann, ed., *Gesetze*, III, p. 167; Cf. P. Wormald, 'Æthelred the Lawmaker', in *Æthelred the Unready. Papers from the Millenary Conference*, edited by D. Hill, BAR British series 59 (Oxford, 1978), pp. 47-80, at pp. 49-58.

³³ K. Sisam, *Studies in the History of Old English Literature* (Oxford, 1953), pp. 278-87, at pp. 281-82.

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by analogy, Sisam's hypothesis about Wulfstan's methods of redaction is substantiated.³⁴

The other area in which Liebermann's *Gesetze* is particularly inadequate (indeed, on occasion, grossly misleading) is his division of clauses and their numeration; and again these problems occur as a consequence of Liebermann's adherence to practices instituted by Schmid. Mis-division of clauses is a particularly common problem; in *Alfred-Ine* alone there are several instances where the numeration suggests a link between two pieces of law, although contextually they are clearly separate. For example, *Alf.* 9 prescribes the compensation payable for killing a pregnant woman, while the following clause, which Liebermann called *Alf.* 9.1, is about the proportion of a fine (wite) to compensation. Although the clause numeration suggests that these two laws are related, the subject-matter is unambiguous, revealing that the latter is an entirely separate provision introducing new material. Neither *Alf.* 9.1, nor that which Schmid and Liebermann called *Alf.* 9.2, is related to the chapter about killing a pregnant woman (*Alf.* 9), although *Alf.* 9.2, which standardizes the fine payable for all types of theft except kidnapping, is certainly related to *Alf.* 9.1

³⁴ In his paper on Æthelred's laws, Patrick Wormald endorsed Sisam's hypothesis: see 'Æthelred the Lawmaker', pp. 54-58.

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(the more general stipulation about fines). Here the evidence of the manuscripts is unhelpful, for the only mark of punctuation used in the texts is the raised-point (and this is used sparingly), and the only initials are the 'G' of 'Gif mon' in *Alf.* 9 and 10.³⁵ The existence of chapter-headings relating to these two clauses suggests *prima facie* that Liebermann's numeration is correct; however, upon close examination, one discovers that the rubric list as a whole is less than adequate, for the chapter-headings generally fail to reflect the central concern of the laws which they purport rubricate, and they often refer to sub-clauses while ignoring the main clause completely.³⁶ The division of the rubric list into 120 appears to be contrived (apparently for its symbolic value), and hence an editor cannot safely rely on this division when seeking to indicate the beginning of distinct chapters using textual evidence. By the time that Liebermann came to write the third volume of his *Gesetze* (the 'Einleitung zu jedem Stück' and 'Erklärungen zu einzelnen Stellen'), he had realized that this numeration was misleading, and he pointed out

³⁵ Liebermann, ed., *Gesetze*, I, p. 54.

³⁶ Cf. above, p. 332, n. 21.

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that Alf. 9.1 and Alf. 9.2 are unrelated to Alf. 9.³⁷ From the reader's point of view, this is hardly satisfactory, since an irregular user of the *Gesetze* will rarely have the time, nor the tenacity, to search through all three volumes of this gargantuan work, looking for relevant notes on a particular clause. In this instance, the problem is exacerbated by Liebermann's German translation, which fails to distinguish adequately between Old English *gield* meaning 'compensation' or 'money paid to a victim as recompense for a wrong' (Alf. 9) and Old English *wite* meaning 'fine' or 'money paid as a penalty' (Alf. 9.1). The former he translated into German as '[Wer]geld' (meaning '[man]price'), and the latter as 'Strafgeld' meaning 'penalty-money'.³⁸ In order to grasp the distinction between these two concepts, one requires a working knowledge of the difference between 'compensation' and 'fine' in Anglo-Saxon law; and to obtain the necessary enlightenment using the *Gesetze*, one is again forced to venture into the later volumes.

³⁷ Liebermann, ed., *Gesetze*, III, p. 53. Although Liebermann was not particularly happy with Schmid's numeration, he maintained it for the sake of consistency with secondary literature on the laws: 'Eine Änderung der Schmid'schen Zählung hätte die Zitierung in der reichen Literatur unbrauchbar gemacht' (Liebermann, ed., *Gesetze*, III, p. 40).

³⁸ Liebermann, ed., *Gesetze*, I, p. 55.

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The central question, therefore, is how should an editor, coming to this material afresh, deal with the problem of clause division and numeration? There already exists a conventional method of describing the manuscripts, the law-codes, and the individual laws which they contain; and to complicate matters, two of the most useful resources available to an editor of Old English material (the Toronto Concordance and Dictionary) adopt the numeration of Liebermann's *Gesetze*.³⁹ Furthermore, if an editor wishes to derive a base-text from the Toronto electronic corpus, whether for editing purposes or to generate a specific concordance (perhaps as the basis of a glossary), he must either change all the numeration before doing so, or (like Liebermann) perpetuate Schmid's misleading interpretations. More significantly, if one changes the numeration one will immediately be out of step with all the other editions and secondary material published since 1858. The obvious solution is to re-number the clauses, but cross-reference to Liebermann's edition, which may be satisfactory for the text itself, but is cumbersome in a glossary. There is, it seems, no simple solution.

³⁹ Antonette diPaulo Healey and Richard L. Venezky, eds., *A Microfiche Concordance to Old English*, Publications of the Dictionary of Old English 1 (Toronto, 1980), and Ashley Crandell Amos and Antonette diPaulo Healey et al., eds., *Dictionary of Old English* (Toronto, 1986-).

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One of the perennial dilemmas facing any editor is the extent to which one should allow oneself to impose subjective judgement upon a text. One is forever seeking to maintain the precarious balance between innovation, and showing a proper respect for the work of past generations, not least that of the author himself. The editorial history of the law-codes is a long and fascinating one, and there is no doubt that Felix Liebermann's edition represents one of the great editorial achievements of the nineteenth century in the field of medieval studies. Yet it would be wrong to call it 'definitive', nor should the editorial history of the laws be allowed to stop with Liebermann and his derivative successors. For although the Anglo-Saxon laws were first edited by William Lambard in the sixteenth century, the study of England's pre-conquest legal history is still in its infancy. The material is intrinsically difficult, but its natural intractability is exacerbated by the presentation of the texts in the only reliable edition: that of Liebermann. As Maitland wrote of Liebermann's first volume in a review article:⁴⁰

It looks like the full score of an opera, and some time must be spent before we can master the manifold typographical devices which have been invented to save time and space.

⁴⁰ Maitland, 'The Laws of the Anglo-Saxons', p. 152.

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At first the editor seems to have a rooted objection to printing six consecutive words without a change of type; and the natural man sighs for the simplicity of a pianoforte arrangement.

The challenge facing scholars wishing to undertake fresh editions of this material is not to surpass Liebermann in erudition, although many of his conclusions are certainly dated and require substantial revision. Rather the primary objective must be to match his enviable accuracy, while presenting new texts and translations, for general use, in a more accessible form.